FUTURE OF INDEPENDENT MARKETERS IN THE POST-MERGER PETROLEUM MARKETPLACE

JOINT HEARING

BEFORE THE
SUBCOMMITTEE ON ENERGY, ENVIRONMENT
AND SAFETY ISSUES AFFECTING
SMALL BUSINESS
AND THE
SUBCOMMITTEE ON GENERAL OVERSIGHT
AND THE ECONOMY
OF THE
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FUTURE OF INDEPENDENT MARKETERS IN THE POST-MERGER PETROLEUM MARKETPLACE

WEDNESDAY, APRIL 11, 1984

House of Representatives, Joint Hearing of the Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business, and the Subcommittee on General Oversight and the Economy, Committee on Small Business,

Washington, DC.

The subcommittees met, pursuant to notice, at 1 p.m., in room 2359–A, Rayburn House Office Building, Hon. Ike Skelton (chairman of the Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business) presiding.

OPENING STATEMENT OF CHAIRMAN SKELTON

Mr. Skelton. I call the joint meeting of the Subcommittee on General Oversight and the Subcommittee on Energy, Environment, and Safety to order.

My name is Ike Skelton, and I am the chairman of the Subcommittee on Energy, Environment and Safety Issues Affecting Small Business. The other gentleman, Berkley Bedell from Iowa, who is the chairman of the General Oversight Subcommittee, will be here shortly.

The House of Representatives has just call two votes. One vote is a quorum call, immediately followed by a 5-minute vote. The members have about 20 minutes to vote on two separate issues.

I am calling this hearing to order, but we will have a recess to vote on the floor. Hopefully, the other members of the subcommittees will be back with us then. As you know, we are on the floor on some very important business, so, from time to time, votes may occur.

I might also say at the outset, and I apologize to the folks who are testifying today, because of markup in the Armed Services Committee, I will be required to leave the hearing early. I would like to hear from the folks here and the next panel before turning the gavel over to Mr. Bedell, the subcommittee chairman from Iowa.

We will stand recessed for approximately 15 minutes.

[A short recess was taken.]

Mr. Skelton. The recess having ended, we will proceed.

I would like to welcome everyone to the hearing. We regret having to change the time as we did. I hope you weren't too inconvenienced by this.

Our hearing today concerns the effect of huge oil company mergers on the downstream small businesses that depend on the major producers and refiners for their supply of gasoline and distillate, and who look to the majors for marketing strength and support.

It is the stated policy of Congress that small businesses are the life's blood of our Nation and the Government action should protect and preserve small businesses. Yet, these so-called mega-mergers, which are done with the consent of the Federal Trade Commission, have a powerful impact on thousands of small businesses. Not only are long-standing contractual relations interrupted, changed or put in jeopardy, but the intangible assets of small businesses such as brand loyalty, solid credit support, and a reliable, steady supply are often swept away overnight.

If this were an ordinary situation, there are laws on the books that would protect the small businesses. The Petroleum Marketing Practices Act, for example, protects franchisers and consumers from drastic unreasonable interruptions and also from fraud.

The Regulatory Flexibility Act protects our small businesses from ill-considered and oppressive Government actions. This act sees to it that Government agencies and commissions analyze the impact of their actions on small business owners and modifies their actions in consideration of that impact.

This committee worked hard and long on that bill, and we meant for it to have some force and effect.

I am very much afraid that these giant oil companies are accomplishing things by Government-approved mergers that they could not do otherwise. Of course, we will hear from the FTC later today, but it appears from their consent order and from the record that I have reviewed that no consideration—or at least very little consideration—is being given to the thousands of small businesses, and the tens of thousands of men and women they employ, and the hundreds of thousands of consumers that they serve.

From my own review, it appears that the FTC in the Texaco-Getty merger dismissed the Midwest refining distribution and marketing operation in a 15-State area with a few sentences about making an attractive package for future sale.

These small business owners, their employees and their faithful customers deserve protection and look to the Government to be the watchful eye to make sure their rights and livelihoods are not swept away.

Mr. Skelton. At this time, I wish to recognize the chairman of the other subcommittee, the Subcommittee on General Oversight, the gentleman from Iowa, Mr. Bedell.

OPENING STATEMENT OF CHAIRMAN BEDELL

Mr. Bedell. Thank you very much, Chairman Skelton.

I want to thank you and your subcommittee for joining us here so that we can jointly have these hearings.

The Small Business Committee has a long history of involvement in matters affecting independent petroleum marketers.

Today we will explore the effects that recent mergers of major oil companies have on downstream gasoline marketing activities. The Small Business Committee is aware that many independent marketers are concerned that these mega-mergers will disrupt long-standing relationships between suppliers and their customers. Questions such as: "What happens to independent marketers when a major refiner with a strong branded network acquires a major refiner who has been supplying product to the independent community?" and "What will happen to a station that is slated to be divested pursuant to a Federal consent decree?" are keeping dealers, jobbers, marketers, and independent refiners on the edge of their seats.

Our hearing this afternoon will explore these problems. We will take a close look at the Federal Trade Commission's consent decree process and explore the reactions to their consent decree in the Texaco-Getty merger. We want to be sure that this and all future consent decrees are sensitive to the competitive pressures of the gasoline marketplace.

Our witnesses today represent a broad spectrum of the downstream petroleum market participants. We will hear from service station dealers, truck stop operators, independent chain marketers, and independent refiners. Finally, we will conclude our hearing with testimony from Mr. Timothy Muris, the Director of the Bureau of Competition at the Federal Trade Commission. Mr. Muris and his staff have the responsibility to fashion the consent decrees that guide these oil mega-mergers.

Thank you very much, Mr. Chairman.

Mr. SKELTON. Thank you.

I understand that Mr. Conte, the ranking member of the General Oversight Subcommittee has an opening statement. Without objection, I will have it shown in the record.

[Congressman Conte's opening statement follows:]

OPENING STATEMENT OF HON. SILVIO O. CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

These hearings today are one more in a series that the Small Business Committee has been involved with since 1971. At that time we were concerned about these oil companies buying up other sources of energy, like coal and uranium. Since oil decontrol, we have had a series of hearings on the relation of oil companies and the independent jobbers, dealers and service station owners. I am very proud that one of those hearings contributed to an Internal Revenue Service ruling clarifying the method by which the major oil companies determine their windfall profit tax liabilities on North Slope oil. This clarification could result in one oil company paying an extra $200 million in taxes.

This latest round of oil mergers poses a great threat to the small businesses in the oil industry. The Federal Trade Commission, in a September 1982 report said that company documents of the 8 majors in the industry contain a corporate policy of not selling gasoline to the independent marketers. I am therefore shocked at the FTC's approval of the majors' merger appetite for the companies that do supply these independent marketers.

Last week's Wall Street Journal had an article about these mergers which quoted a Getty dealer from Williamstown, Massachusetts. That dealer was very concerned about the loss of the Getty name for his business. I'm looking forward to hearing the concerns of other Getty dealers who will testify today.

Mr. SKELTON. The first group today is composed of Ed Day, Missouri; Will Bradley of Missouri; Ray Pratt of Illinois; Ted Harder, Kansas; and Ron Ziegler, Washington, DC, representing the National Association of Truck Stop Operators. Also, we have Al Daziel, Raoul Youssef, James Ayotte, and Vic Rasheed. Would you all take the stand, please?

Would the other four panelists please come up? We will question the truckstop operators first, and then we will question you next. Please come up in an effort to save time.

I will ask that each of you, if you have a prepared statement, offer your statement for the record and summarize it as best you can.

We will ask Ron Ziegler to lead off, please.

TESTIMONY OF RONALD L. ZIEGLER, PRESIDENT, NATIONAL ASSOCIATION OF TRUCK STOP OPERATORS

Mr. **Ziegler**. I will be very brief. As you know, I don't speak much more than "no comment" most of the time.

Mr. Chairman, we appreciate the opportunity to be before your subcommittee and Chairman Bedell's subcommittee.

I represent the truck stops in the United States, and we are deeply concerned about the decision by the FTC to require Texaco to sell the Getty central region marketing area. We are concerned about this, as my colleagues will state, fundamentally because we feel it will disrupt the entire marketing process in the 15-State central region area.

We feel that the FTC should withdraw its consent agreement and review the matter in light of the concerns that our marketers have in the area. I think that is a fundamental issue. We have only one course to go, and that is to use the encouragement of the Congress and public opinion to require the FTC to take another look at the decision that they made to require Texaco to sell Getty's assets in the central region area.

With those comments, I would like to defer to the men who sit here before us with 125 years of truck stop experience.

Mr. **Skelton**. Each or collectively?

Mr. **Ziegler**. Ed Day is 100, and the rest are 25.

Mr. **Skelton**. I would like to point out that what we want, I think all of us on these two subcommittees, is to understand the basic facts, but we want to know how this is going to affect you. This is the type of information that is helpful to us.

[Mr. Ziegler's prepared statement with attachments follow:]

Prepared Statement of Ronald L. Ziegler, President, National Association of Truck Stop Operators

I. INTRODUCTION

The National Association of Truck Stop Operators (NATSO) welcomes the opportunity to discuss the possible effects of recent oil mergers on the retail-end of the distribution chain. We also submit that the adverse consequences already uncovered in at least one of the proposed mergers are capable of repetition in future mergers.

As truck stops, and other small businesses in the retail marketing sector, are forced to come to grips with the termination of longstanding business relationships with suppliers of petroleum products being acquired or merged, distinct changes will be worked in the competitive structure at this level. Many truck stops will be put in the position of finding alternative sources of supply—either through the merged company or from their competitors—with possible changes in branded/unbranded status. These effects may even be felt in the pricing area. Certainly, they will include many shifts in marketing strategies and programs. Marketing, after all, is the "name of the game" to every truck stop and retail distributor.

It is, therefore, extremely important that the General Oversight and Energy Subcommittees of the House Committee on Small Business are holding this hearing. Congress should focus on what specific factors ought to be considered in determining whether these big oil company mergers are in the public interest. When the Federal Government, through the Federal Trade Commission, has the authority to order the divestiture of refining and marketing assets so that a proposed merger will not run afoul of the antitrust laws, the exercise of the government's antitrust law powers, that is the time for Congress to step in. NATSO strongly urges your subcommittees to ensure that, during the plethora of mergers among the large integrated oil companies which has emerged and seems destined to continue, small businesses are not left unprotected. It would be ironic, indeed, if the FTC's own powers, which supposedly exist to ensure such protection, were in fact to be the root cause for a substantial lessening of competition in the downstream market.

Atlhough NATSO is concerned about the general trend unfolding with these oil company mergers, we are not antimerger. What we view with a sense of alarm, however, is the possibility that independent refiners and small business marketers of refined products may be unable to complete effectively in the petroleum market. As more concentration occurs, the major oil companies may ultimately control all or most of the crude oil supply and reserves upon which our business is dependent. Should this result take place, the downstream effects will be severe, possibly to the point of eliminating all branded product competition.

One final matter deserves mention about NATSO's overview of the merger trend. The resolution adopted by the Senate on March 28, 1984, calling for a study of antitrust and energy issues in connection with oil mergers, appears to us to offer a viable solution to the heavy debate surrounding a merger moratorium. We believe it is better to do something constructive toward understanding the reasons behind the criticisms of these mergers. These subcommittees may wish to consider a similar resolution, as part of a comprehensive response to issues uncovered in this hearing. NATSO has other general recommendations, as well as specific ones on the Texaco/Getty merger, which are spelled out in detail in this statement.

Although NATSO contends more attention must be paid to competitive effect on the retail end of the distribution chain flowing from oil mergers, we are very concerned because of the concrete adverse competitive consequences which are already arising because of one merger. Many of our members, and numerous other truck and fuel stops, which are franchisees or affiliated with the Getty Oil Company, have begun to register serious complaints about Texaco's acquisition of Getty. These complaints are not so much about the merger itself, but stem mostly from the proposed consent order, negotiated between Texaco and the FTC.

Because NATSO believes the Texaco/Getty merger serves as a good illustration of our overall concerns, we have asked several of our members who are Getty truck stops, to testify before you. From their statements, NATSO hopes these subcommittees will gain substantial insights into the problems every small business engaged in the retail chain faces. Consequently, the members of these subcommittees also should be able to generalize from the particular details shared by these truck stop operators about very real harms potentially arising from the FTC consent order in the Texaco/Getty merger. Not only should Congress be concerned about these specific harmful effects, but also about the likely repetition of such problems. The Getty situation may easily be duplicated in future mergers where independent jobbers, dealers, and truck stops will be affected.

We encourage both subcommittees to seek out methods of relief for all small businesses before their survival becomes a moot issue. Specifically, NATSO also makes recommendations for modifying the Texaco consent order to ensure safeguards exist to alleviate the negative competitive effects this merger could have on truck stops and other small business.

II. BACKGROUND OF THE TEXACO/GETTY MERGER PROBLEMS

In order to better understand how the Texaco/Getty merger can be instructive of future merger effects on small business engaged in marketing petroleum products, it is necessary to describe briefly the elements of the FTC consent order. In early January 1984, Texaco announced a tender offer for Getty stock, along with a merger agreement and a stock exchange agreement.

The FTC entered into negotiations with Texaco after its Bureau of Competition presented the Commission with a draft complaint charging various violations of the Clayton Act and the Federal Trade Commission Act would result from the proposed merger. Although the FTC focused its antitrust analysis on four major areas of product or geographic overlap, NATSO is principally concerned over the requirement that Texaco divest itself of the Getty refining, transportation and sales and marketing assets located in the 15 Central State region.[1] Moreover, NATSO recognizes that even within the scope of this single segment of the consent order, the Herfindahl-Hirschman Index resulting from Texaco's increased ownership of pipeline assets for transporting petroleum products into Colorado would virtually ensure the agency would challenge this part of the acquisition.[2] The FTC, however, has tentatively concluded that all Central States assets should be sold to remedy the antitrust problems with the pipeline "to assure that a viable competitive entity can be divested."

Specifically, then, NATSO is primarily interested in the divestiture order as it relates to the Central States' assets. Getty has been supplying over 200 truck stops and more than 100 fuel stops in that region; 52 of those truck stops are NATSO members. In contrast, Texaco has almost completely withdrawn from supplying truck stops in the region.

If the FTC decides to finalize its approval of the merger, Texaco would be required to sell, within 12 months, the Getty refinery at El Dorado, KS and all related crude pipelines and terminals, as well as all sales, marketing, and transportation assets in the 15 States. If Texaco cannot divest these assets to one or more purchasers approved by the FTC within that period, the FTC will designate a trustee who will have an additional 18 months to sell the properties. No provision is made for requirements beyond the 30-month period described in the order.

Contrary to early reports of the consent order, independent marketers served by Getty are afforded no meaningful protections in the consent agreement. Unlike the divestiture plan involving independent refiners in California, who are guaranteed an adequate supply for five years of crude oil of similar grade and quality as that supplied by Getty, Texaco has no corresponding obligation to any purchaser of the Getty refining assets in the Central States.

Equally important, the proposed consent order contains no provision requiring Texaco to provide refined product to Getty franchisees and customers. Thus, the entire downstream marketing end of the chain has been set adrift to fend for itself in acquiring alternative sources of supply. Any purchaser of the El Dorado refinery may well not be capable of being an adequate source. Such potential alternatives may, of necessity therefore, include new distributors and wholesalers affiliated with other major oil companies or independents who might be able to supply unbranded products.

To place these elements of the proposed consent order in better perspective, it is also helpful to examine the production and sales figures of the El Dorado, KS, refinery. The best information available to NATSO for 1983 shows that El Dorado produced 13.5 million gallons of diesel fuel per month, compared to only 6.8 million gallons per month of gasoline. Of the gasoline produced, 60 percent was sold to branded truck stops and jobbers, 20 percent to unbranded jobbers, and 20 percent to Getty-owned stations. For distillates, the sales figures reflect 90 percent went to branded truck stops and jobbers and only 10 percent was sold to unbranded jobbers.

Finally, completing the background picture, most truck stops served by Getty in the 15-State region presently operate under franchise agreements. These franchise relationships, including the use of the Getty/Skelly trademarks and fuel supply agreements, are governed by the Petroleum Marketing Practices Act of 1978. This statute spells out the conditions under which termination or nonrenewal of the agreement are permissible and establishes the steps the franchiser must take if it wishes to terminate the relationship.

III. RECOMMENDATIONS ON THE FTC CONSENT ORDER

As we explained, the FTC has taken the position all of Getty's refining, marketing, sales, and transportation assets in the Central region must be sold as a package in order for the purchaser of the Chase Pipe Line to obtain a viable asset. NATSO contends the FTC has indulged in "over-kill" on at least two levels.

Initially, bundling oil industry assets may be the historic mechanism for maximizing sale price, but in the case of the relevant Getty assets, we think it is not necessary to tie up all properties in a single package. Significantly, as the subcommittees are aware, the many truck stops and other independent retail outlets in the 15-State region, are not Getty marketing assets. Depending, then, on the exact potential buyers which emerge, we can foresee many oil companies desiring to view the available assets on a regional level. Even if one assumes that certain "support" assets must accompany the sale of Chase, and recognizing the existence of exchanges, we think it might make more sense to consider three or four sales along regional lines.

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[1] These States are: Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Michigan, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin, and Wyoming.

[2] Texaco already own 40 percent of the Wyco Pipe Line and would acquire Getty's 50 percent share of Chase Pipe Line, both of which serve Colorado, principally the Denver area.

A related point can also be made. Under certain circumstances, given the virtual lack of any antitrust "overlap" in the retail distribution end of the chain, Texaco itself might not be forced to divest all of the Getty assets. The FTC all but concedes in its consent order that a major portion of these assets, except for the Chase Pipe Line and some marketing assets in Colorado, are being included in the divestiture to ensure that a "viable competitive entity can be divested." Apparently, in recent days, Texaco has expressed interest in retaining some or all of the Central States assets (except for Chase and Colorado, we presume). Such a possibility may deserve more attention and consideration.

What is abundantly clear to NATSO, however, is that the historic profit center embracing the El Dorado refinery cannot be sold without ensuring two things. Since the FTC recognizes that "competitive viability" should result from the divestiture, it is absolutely critical for the Commission to understand what standard exists by which the truck stops and other retail small businesses served by Getty will measure that competitiveness. That standard is comprised of two parts: An adequate supply of crude oil to run the El Dorado refinery and an aggressive marketing program to make use of the downstream marketers.

Earlier in our statement we described the franchise relationship existing between Getty and its truck stops and other retail outlets. In addition to the use of the Getty/Skelly trademark, NATSO members have benefitted greatly by a national Truck Stop Program designed by Getty to make full use of its independent marketers serving the trucking industry. After Skelly withdrew from ownership of truck stops and merged with Getty, this program has really emerged as one of the finest in the country. Without a similar aggressive marketing effort by one or more purchasers of the Getty assets, it would be exceedingly difficult for truck stops in the region to remain as competitive as they have become over the years under the Getty program.

The major components of Getty's program illustrate the completeness and thoroughness of the commitment Getty has had to truck stops in the Central States region. Over the years, Getty felt it could better serve its customers by furnishing: (1) technical advice on management; (2) advertising, first regionally and later nationally after the merger between it and Skelly; (3) solicitation programs designed to attract new customers; (4) a special sign for truck stops; (5) allocation and spacing (timing) of deliveries; (6) supply ample quantities of product at competitive prices, including attractive discount policies, to generate profitable truck stop operations; (7) a credit card system especially designed for truckers to attract coast-to-coast truckers and company accounts; and (8) a program of absorbing the service charges on MasterCard and VISA accounts.

Not only does NATSO believe it is vital to replace Getty's commitment to its truck stops to ensure their future competitiveness in the downstream market, but the same requirement exists in assuring an adequate future supply of refined product. Unless the prospective purchaser or purchasers of the El Dorado refinery have a supply of crude oil comparable to Getty's, the very real potential exists that the post-sale output of the refinery will be reduced. All truck stops, dealers, and jobbers currently served by Getty will be forced to find alternative sources of supply if that happens.

From the foregoing discussion, several shortcomings of the FTC consent order are apparent. NATSO, therefore, would recommend that the FTC withdraw its tentative approval and renegotiate the terms of the consent order with Texaco.

First and foremost, the FTC must act to preserve the future competitiveness of independent downstream marketers by acknowledging its responsibility to make a full inquiry into the ability of any buyer to supply crude to be used in the El Dorado refinery. Furthermore, any purchaser must have the ability and commitment to undertake a meaningful marketing program sufficient to meet the needs of former Getty customers. Specifically, NATSO would encourage the FTC to examine the precise means by which Getty operated its successful Truck Stop Program, to gain an insight into the plans offered by any prospective purchaser. The only purchaser which should be approved is one which is a fully integrated oil company, with the capabilities outlined.

In order for prospective purchasers to have advance notice that the FTC will conduct a searching examination of their refining capabilities and commitment to competitive marketing, adequate notice of the FTC's intention must be given. In NATSO's view, that can only come as part of a new consent order. It is not a satisfactory alternative to argue that such scrutiny can be performed in the subsequent purchaser approval proceedings. Purchasers who come forward without the means to meet these criteria, would be able to raise a legal issue over the lack of notice. Thus, the fairest and most equitable way to proceed is to give reasonable notice in a new consent order that approval will be given only to one or more fully integrated oil companies.

Following a related line of thought, NATSO also contends it is imperative that the FTC negotiate with Texaco a supply of crude oil will be guaranteed to any purchaser or purchasers of the El Dorado refinery for use in that facility. This guarantee will lessen the requirement on some prospective purchaser and allow more companies to give active consideration to buying some or all of the Getty assets. Such a guarantee would also have a favorable effect on the downstream marketing community because it would result in a greater likelihood their existing level of refined products could continue to be supplied. NATSO would suggest the FTC seek a 10-year guarantee of crude from Texaco for use in the El Dorado refinery.

Turning to the other element of the business relationship enjoyed by truck stops in the affected region with Getty—the existing franchise agreements—NATSO also has a recommendation for the FTC in this area. We have previously noted the high percentage of products produced at El Dorado that is sold to branded truck stops and jobbers. This fact, together with the uncertainties of a 12- to 30-divestiture period, make it incumbent on Texaco to assure that the statutory obligations of Getty, as franchiser, are met. Thus, NATSO firmly endorses the concept of Texaco assuming full responsibility for performing all Getty's requirements under the Petroleum Marketing Practices Act (PMPA). The FTC should secure a commitment in the new consent order it negotiates with Texaco. Of course, that obligation would cease once all the Getty assets are sold to one or more approved purchasers.

Considering the extensive modifications NATSO believes are necessary to alleviate the shortcomings of the proposed consent order, a final recommendation seems appropriate. NATSO submits the FTC must be in a position to oversee all terms and conditions of the order until such time as divestiture is complete. Consequently, NATSO advocates an express provision in the new consent order clearly withholding final approval of the merger until the ultimate divestiture ordered by the Commission is complete.

In summary, then, NATSO submits basic changes are necessary to the proposed consent order to protect downstream marketers such as truck stops. Our recommendations, then, are as follows:

Texaco will be required to sell the refining and marketing assets in the Central region only to one or more fully integrated oil companies.

Texaco will guarantee an adequate supply of crude be made available for a period of ten years to any purchaser or purchasers of the refinery.

Texaco will abide by all provisions of the Petroleum Marketing Practices Act until a completed sale of all assets.

Final approval of the merge by the FTC will not be given until any divestiture plan is completed.

IV. LONG RANGE RECOMMENDATIONS FOR OTHER MERGERS

Although NATSO is obviously very concerned about the impending approval of the Texaco/Getty merger in the face of what we perceive as serious adverse consequences for the truck stops currently in the Getty franchise system, we also recognize these problems could be repeated in future oil industry mergers.

Consistent with our discussion of the Texaco/Getty merger, then, two principal problems require congressional attention:

Congress should direct the FTC to establish detailed guidelines for analyzing the effects of mergers in the oil industry which cover retail sales and marketing factors.

Congress should amend the Petroleum Marketing Practices Act to clarify that divestiture of marketing assets ordered by the FTC in no way relieves the acquiring or merging company from the statutory obligations of the original franchisor.

Certainly, the FTC's authority over mergers is broad enough, we submit, to enable it to ensure the results of any merger are not anticompetitive. However, NATSO finds it disturbing to view the Texaco proposed consent order and find it wanting in so many areas. On balance, then, Congress should act to mandate close scrutiny by the FTC, at least in oil mergers, on the effects any merger will have on retail marketing as part of the overall antitrust analysis. NATSO would be pleased to work with these subcommittees to draft appropriate legislation to accomplish this objective. Indeed, we submit such a mandate should properly extend to the Department of Justice also so that two types of antitrust analysis are not in effect for the Federal agencies charged with very similar responsibilities.

The second major statutory problem highlighted by the Texaco/Getty merger involves the PMPA and its relationship to divestiture order by the FTC. It is absolutely imperative that any argument that could be made that a divestiture order preempts the PMPA requirements be removed. NATSO's research on this potential legal issue indicates no pre-emption exists, but no express language to that effect is contained in the PMPA. Therefore, out of an abundance of caution, and to clarify a matter which could be raised to subvert the intent of the PMPA to protect franchisees, NATSO urges the PMPA be amended to clarify that no pre-emption is intended.

Legislation has already been introduced by Congressman Synar and Congressman Tauke (H.R. 5023) which would amend the PMPA in other respects. The bill has already received wide support from affected groups, including the National Oil Jobbers Council. NATSO will work with NOJC, these Congressmen or these subcommittees, to find appropriate language to clarify this important point. We think Congress should act quickly to ensure no needless controversy arises in this area.

CONCLUSION

The truck stop industry is an integral part of the downstream petroleum marketplace. It holds a unique place in that market because it services the trucking industry and the travelling public. As transportation use of the middle distillate slate becomes increasingly significant to refiners, we believe our industry can and should grow.

The threat posed by oil mergers to the ability of truck stops to compete fully and actively in the downstream market must be examined thoroughly. Our industry's survival depends upon it. If the adverse consequences on our competitiveness from the Texaco/Getty merger is not immediately addressed and rectified by the FTC and Congress, we expect these problems to arise in other mergers as well.

Chairman Skelton and Chairman Bedell, we need assistance from your subcommittees to exert heavy pressure on the FTC to modify its consent order. We also need legislation mandating the Commission to perform better analyses on the competitive effects of these merges on independent small businesses in the downstream marketplace. Congress must ensure that the protections embodies in the Petroleum Marketing Practices Act are not rendered useless by a divestiture order. Immediate action on these fronts is required to allow the small businesses in the independent marketing end of the chain to remain competitive. We urge you to take appropriate action now.

ATTACHMENTS TO NATSO STATEMENTS

(Letters from nine Getty Truck Stops in the central region)

McALISTER OIL CO.,
Wellington, KS, March 26, 1984.

RONALD L. ZIEGLER,
Alexandria, VA.

DEAR RON: This letter is in response to your letter of March 19, 1984. There are many questions in my mind about what problems this Texaco-Getty merger will cause. You have pointed out some of these in your letter, but I do have some that bother me more. Why would anyone want to buy the Getty refinery at El Dorado, Kansas if they don't have a good supplier of crude? If there are no buyers, will the FTC then allow Texaco to close the plant and write it off as a tax deduction? Did Texaco buy Getty and hope this would happen so it would create a tigher supply and demand situation for its other operations by not having to compete in this market; therefore becoming more profitable?

It is my belief that Texaco had a very good idea from the FTC that this would happen before the merger. Who will pay for the tax write off? The general public, because the FTC is either stupid, or doesn't care?

The FTC allows Texaco to buy out its competition, then forces them to "offer" it to a non-existent buyer which leaves the door open for Texaco to close the refinery and still keep the crude reserves that will make Texaco's other refineries more profitable. The greatest increase in profits will be due to the tax write off and not because they are winning in the area of competition in the market-place. Texaco is competing with the IRS, not the oil industry.

So here we go again; the government sticks its nose in to protect the consumer and ends up playing into the hands of the smarter managers in big business.

(From the other side.) If the refinery at El Dorado is eventually closed, then the other refineries in this area will be able to run at a higher capacity and consequentially lower their operating cost and become better able to compete in this market at lower prices. It has happened before.

The only thing that really needs to be protected is the reserves/crude being dedicated, on a percentage basis to this area (marketplace), and that Texaco will not be allowed to refuse to sell these reserves to any refinery in this marketplace.

McAlister Oil Co. has been in business for over forty years and we will continue to be in business long after this has passed, but we are concerned with all of the negative effects this kind of thing causes. If there is someone who will buy the El Dorado refinery, then publish that fact so people who are directly affected by it can get on with their lives in a positive way.

My request then is this; who might want to buy the El Dorado refinery? Is it marketable? If you could request an answer to these questions from the all knowing FTC, it would be of great relief to me and my customers.

Sincerely,

THOMAS K. MCALISTER.

MIDSTATE TRUCK PLAZA AND RESTAURANT,
Normal, IL, March 30, 1984.

Mr. RONALD L. ZIEGLER,
National Association of Truck Stop Operators,
Alexandria, VA.

DEAR RON: As a Truck Stop Owner Operator this is of great interest to me and should be to the FTC. Getty has going a great program nationwide for the Truck Stop owner and Trucker. For someone to buy this marketing area that would not be able to carry on this national program would be a big blow to the Truck Stop, trucker and not least of all the consumer.

This will lead to control pricing at the pump for the consumer, if this kind of thing continues to happen. With the small business man out of the way what will stop it?

Sincerely,

HAROLD HALL, *Owner-Operator.*

SHOEMAKERS TRUCK STATION,
Lincoln, NE, March 30, 1984.

RONALD L. ZIEGLER,
President, National Association of Truck Stop Operators,
Alexandria, VA.

DEAR RON: In reference to your letter of March 19, 1984, I have mixed emotions about it. Texaco did have the 10.1 billion dollars and Getty was for sale, so they should be able to do whatever they want to do with their purchase. This did, however, leave a lot of people hanging out on a limb, including ourselves.

The Getty Truck Stop program was just getting off the ground again with a great advertising program, but that is not so now. I asked Terry Mason last week when we were going to have another seminar. He said he didn't know, mainly, because they didn't have anything to talk about. The only thing they talk about is whether to take retirement or not.

I guess if I had a choice, I would like to have Texaco retain the refinery and supply us under the Texaco sign. We need a major oil company that is going some place to supply us and keep us competitive.

Thank you for your interest in our problem.

Very truly yours,

HARLEY G. SHOEMAKER.

ART'S TRUCK TERMINAL, INC.,
Cheyenne, WY, March 28, 1984.

RONALD L. ZIEGLER,
National Association of Truck Stop Operators,
Alexandria, VA.

DEAR RON: As a Getty Marketer it was quite a blow to hear of the Texaco-Getty merger because of the specialization and success of Getty to meet the demands of the Trucking Industry. My business depends on this market and the Getty trucking program was certainly an asset.

This news in itself was a shock but then I hear my supply source will be kept by Texaco but the rest of it is to be sold as ordered by the F.T.C. There would be no way that we could recover our investment in five years, which is the cut off time for Texaco.

At Cheyenne I have been on an exchange program that results from supply from El Dorado Refinery and the Chase pipeline, also my second source supply is from Chase at Denver, Colorado. Unless some major oil company with adequate oil reserves takes over the refinery and the pipe lines we are at the mercies of our competition. I realize that we are just one small company, but if it effects others the same, the F.T.C. has certainly taken a major step to eliminate the small business man.

Thank you for your interest in this situation which has been turned into a nightmare by the F.T.C.

Yours truly,

ARTHUR C. GROUT, *President.*

BOB'S TRUCK STOP,
Worthington, MN, April 3, 1984.

RONALD L. ZIEGLER,
National Association of Truck Stop Operators,
Alexandria, VA.

DEAR MR. ZIEGLER: I agree with Mr. Day and Mr. Bradley on the matter.

If no crude is supplied to the refinery I am sure we will lose a very good competive company "Skelly-Getty."

I for one am concerned and have started looking for another supplier.

I see no reason why Texaco couldn't keep the Getty distribution and refinery in this area as Texaco has left the area.

The FTC made a very unwise decision on this matter not thinking of small business at all.

Thank you.

Yours truly,

———— ————.

BROWN & HICKS OIL CO., INC.,
Camdenton, MO, March 28, 1984.

MR. RON ZIEGLER,
National Association of Truck Stop Operators,
Alexandria, VA.

DEAR RON: After hearing you speak at a Getty-Skelly Truckstop seminar, I know you are aware of the excellent program presented to the Getty-Skelly truckstop and fuel stop operators. A feeling of genuine concern is bestowed upon us at these meetings.

This past year we were introduced to the new national promotional package featuring George "Goober" Lindsey. We were also introduced to the new Getty-Skelly National Truck Credit Card System. Our company has integrated both of these new programs into our operation and both have proved beneficial. There is no way we could have even come close to equaling either of these two services as an unbranded independent operator, and a like seminar, which was free to Getty-Skelly truckstop operators, would have cost several hundred dollars.

The new purchaser of the assets mentioned in the proposed FTC ruling might not be a fully integrated oil company, might not have sufficient crude oil reserves to operate the refinery, and might not have the aforementioned services, or the ability to market their product in an aggressive manner. This would be devastating to many of the Getty-Skelly marketers in the 15 state midwest region.

The small businessman needs to be affiliated with a large corporation to rely on their expertise in promotion, marketing, research, and new product development. This ruling is not only important to Getty-Skelly marketers, but to all small businessmen.

Sincerely,

GREG HICKS, *Vice President.*

MITTEN, INC.,
MITTEN TRUCK STOP,
Oakley, KS, April 4, 1984.

Senator ROBERT J. DOLE, Senator NANCY LANDON KASSEBAUM, Representative PAT ROBERTS, Representative JIM SLATTERY, Representative DAN GLICKMAN, Representative LARRY WINN, Jr., Representative BOB WHITAKER,
Washington, DC.

DEAR LEGISLATOR: I know you are well aware of the Texaco and Getty merger. I would like to express my concern on how the Federal Trade Commission is handling this merger.

We have owned and operated a Skelly-Getty Truck Stop in western Kansas since 1968. By being affiliated with Getty Oil in their truck stop program, we have enjoyed one of the best truck credit card systems in the nation, along with competitive fuel prices. When we first were informed of the Texaco-Getty merger we thought it might even improve the truck stop program due to the broader national marketing area.

It is my understanding now that the FTC has stepped in and ordered Texaco to sell the mid-west marketing region, the refinery at El Dorado, KS, and all the transportation systems in the midwest. It is also my understanding that Texaco does not have to supply crude to the purchaser of the El Dorado refinery, as was first reported.

Where does this leave not only the Getty Truck Stops, but our local farm jobbers and dealers in this area, if the purchaser does not have adequate crude reserves to operate the El Dorado refinery and Chase pipelines? I think we may be in a dangerous situation that will leave only our competition left to us as a supplier.

I don't think they will be interested if they have an outlet across the street or a few miles down the road.

I am sure you can see the hardship the FTC rulings may impose on us by eliminating our supplier and reducing the competitive aspect of the business in our area and the entire midwest.

I stand as not opposed to the merger itself, but as objecting to the FTC's decision which was made without consultation with so many small businesses like us that may be put in great jeopardy because of these rulings.

Sincerely,

GARY L. JOHNSON, *President.*

WIEDMAIER TRUCKER AND TRAVELER CENTER,
St. Joseph, MO, April 3, 1984.

Mr. RON L. ZIEGLER,
National Association of Truck Stop Operators,
Alexandria, VA.

DEAR RON: Received your March 19th letter and I am in full agreement that the National Association of Truck Stop Operators should forcefully represent my interest regarding the subject merger. I was shocked to learn that the Federal Trade Commission consent order did not require Texaco to supply crude to the El Dorado refinery.

We have been in the petroleum business for over twenty-two years. In addition to the truck stop business we supply other Getty Service Stations, farmers & Wholesale Accounts.

Today I depend on the El Dorado refinery to supply our petroleum needs more than ever before since many other large refineries have been closed in the Mid West area. Without available crude at a fair price, a new buyer of the El Dorado refinery would be very reluctant to sign a supply contract with previous Mid West Getty customers.

The Federal Trade Commission should reconsider their decision to force Texaco to sell the El Dorado refinery. If the FTC does not back off then we should insist that Texaco supply the El Dorado refinery with crude at a fair price for a ten year period.

Sincerely,

JERRY R. WIEDMAIER, *President.*

TRUCKER'S INN OF JOPLIN,
Joplin, MO, April 3, 1984.

Mr. RONALD L. ZIEGLER,
Alexandria, VA.

DEAR MR. ZIEGLER: In reply to your letter and attachments of March 19, 1984. Please add my name to the list of endangered marketers in the Midwest. Certainly extinction is no longer a joking matter. The impending loss of our major marketing program and our supplier following three years of recession may be more than many can or will want to recover from. Skelly began to retrench their marketing shortly after the merger with Getty by area withdrawals, marketing program reductions and divesture of assets in selected areas. The momentum of a Midwestern presence since 1919 coupled with decontrol and other major company withdrawals caused many to overlook the signals of trouble ahead.

The problem of relief is so large that it exceeds my comprehension. My disappointment in the government is twofold from the disaster of D.O.E. in 1972 and the overburden of government regulation to this Texaco/Getty situation which in my opinion cries for attention but receives none. How can Washington ignore the accumulation of depletable natural resources by a few companies and expect everyone else to continue supplying the needs of the public at a competitive price? To me these recent maneuvers signal one thing. All the "cheap" oil has been found. Next the domestic crude price will rise in harmony with Mideastern and European producers. The windfall profits will be enormous and the price at the remaining pumps with products to sell will rise in tandem.

I appreciate this opportunity to express my frustration.

Sincerely,

D.K. TOPE.

Mr. SKELTON. I will recognize the next in line, Mr. Will Bradley.

TESTIMONY OF WILL BRADLEY, OWNER, B&D OIL CO.

Mr. BRADLEY. Chairman Skelton and Chairman Bedell, good afternoon to you both. I truly appreciate the opportunity to be here.

In a quick synopsis of my prepared testimony, I can only say that all the programs that have been developed over the years with the Skelly Oil Co. and later with Getty Refining and Marketing, would be greatly missed. This includes a fine truck stop credit card program that is recognized in the trucking industry nationwide, along with special brand name identification specifically pointing out the value of truck stops on the interstate and primary road systems. It also includes all the national advertising that has come out in national publications over the years—this happens to be the national publication of the National Association of Truck Stop Operators, read nationwide by the trucking industry. You can see the extent that Getty-Skelly has gone to to promote the truck-stop business. I see it as a tremendous problem from the fact that I stand a chance to lose all this identification that I have spent my lifetime building. I have been involved in this business all of my working life.

Mr. SKELTON. Let the record reflect he shows Mr. Ed Day.

Mr. BRADLEY. Ed Day, my partner. We have between us over 70 years of experience in petroleum marketing. We think we know just a little bit about it.

I know, sir, that my business is going to suffer. I want you to keep in mind, and everyone else in Washington—especially the FTC—that the only thing Getty owns at my business is that trademark. The rest of it is mine and my partner's.

I don't want to see that destroyed because of 30 months of waiting around finding out who is going to supply me.

With that, my old partner is on, Mr. Chairman.

Mr. **Skelton**. The Chair recognizes Mr. Ed Day.

TESTIMONY OF ED DAY, OWNER, B&D OIL CO.

Mr. **Day**. Let the Chair also understand that I am not really that old, even though I have been associated with the oil business since 1947.

This FTC order concerns us primarily because we can see nothing in it that extends to cover us. We are not part of the Getty salable assets. We are beyond that part.

In addition to us, there are approximately 4,500 branded Skelly-Getty outlets supplied by 582 independent jobbers serving these customers. The remaining 2,000 are supplied direct by Getty, but many of those are also independently owned.

Gentlemen, we are hanging out there by a thread. We can find a supplier, but we cannot find one that has the things we need, the promotions, the advertising, the identification, the financing, and so forth. We ask that you consider these very greatly.

We also ask that you think back to 1970 when the Sinclair-Arco merger took place, and Arco disposed of the Sinclair properties to an outfit we call Pasco, who had no marketing facilities. Probably none of you gentlemen have ever heard of Pasco. They are out of business again. But what appeared to be a good FTC ruling affected many small jobbers in our part of the country. Think about that, and try to include us in this deal.

Gentlemen, we think that what is necessary is for the FTC to make a major revision to strengthen its rather weak consent order to ensure downstream retail marketing does not suffer a lessening of competition. Safeguards can come by announcing the only acceptable purchaser would be an integrated oil company. Such company should demonstrate that they possess an adequate supply of crude to run the El Dorado refinery at its present level, and that they are capable, and, in fact, intend to continue an aggressive marketing program to make use of the independent downstream marketers.

Our full testimony will include some other items that we think you should consider. But, gentlemen, remember that we are beyond the assets of Getty Oil.

Thank you.

Mr. **Skelton**. Thank you very much, Mr. Day.

As I said earlier, everyone's statement will be included in the record, without objection, and we are asking you folks to summarize.

I might interrupt at this point and say that the oil business is not the only business that has gotten the merger attention. Page F-1, Business and Finance of the Washington Post today, the front page, has four stories dealing with various different types of mergers. It is a serious business.

Mr. **Sisisky**. Mr. Chairman?

Mr. **Skelton**. Yes, sir.

Mr. **Sisisky**. I hate to ask this question now, but I just want to get this straight in my mind as we go along.

Do you own the property, sir?

Mr. **Day**. Yes, sir.

Mr. **Sisisky**. You do own the properties.

Mr. **Day**. Yes, sir.

Mr. **Sisisky**. OK.

Mr. **Day**. We own the truck stop, and we are an independent jobber as well, and own service stations in addition to the truck stop.

Mr. **Skelton**. I have a follow-on question on that, but I will wait.

[Mr. Bradley's and Mr. Day's prepared statements follow:]

Prepared Statement of Will Bradley, Owner, B & D Oil Co.

Good afternoon. My name is Will Bradley and I am an owner of B&D Oil Company. With my partner, Ed Day, I also own the B&D Truck Port, a Skelly franchise truck stop in Lebanon, MO and a member of NATSO.

Mr. Day and I have a long-time knowledge of Getty operations, since we both worked for that company for many years before we started our business. We are delighted to have this opportunity to appear before the General Oversight and Energy Subcommittees to tell you our impressions of what the Texaco/Getty merger means to truck stop operators. Indeed, there are more than 200 truck stops and fuel stops in the Getty/Skelly franchise system in the 15 Central States covered by the Texaco divestiture order.

The effects of this merger could create several substantial problems for all of us. If other mergers take place which similarly absorb other oil companies with franchise retail outlets, you will see these problems repeated down the road. Thus, our concerns are indicative of the grave future for many small businesses unless some way is found to assure adequate safeguards are imposed in oil mergers.

Let me first describe the position of truck stops in the downstream petroleum marketplace. I believe the truck stop industry holds a unique place in the retail petroleum market. We are different from all other phases of the marketplace because our customers do not live next door or across town. Rather, our customers are coast-to-coast truckers, particularly independent owner-operators, or other long-distance travelers. As a result, a major factor in our success is the existence of name brand recognition.

The American trucker and family traveler have come to appreciate that some major oil company brands, such as Union 76, Skelly/Getty, or Amoco to name several, are associated with fine facilities. Even during the oil embargo, when long lines at gas stations generated some negative reaction to name brand companies, overall brand name recognition remained strong for truck stops.

I mentioned Skelly/Getty has traditionally had high brand name recognition among truck stops in the retail marketplace. This fact is no accident. Skelly introduced a comprehensive truck stop program in the early 1960's. That program has evolved into the nationally recognized chain of which our truck stop is a part.

There are several reasons why the Getty program has been successful. I will touch on two of them in particular—pricing and advertising. NATSO's other witnesses will describe additional elements of the program and a complete description of the program is contained in NATSO's full statement.

Competitive pricing.—The retail market is the most competitive segment in the petroleum marketing chain. From the truck stop perspective, it is very important to have a supplier who fully understands the retailers' problems. Skelly/Getty has been committed to maintaining a competitive wholesale pricing structure for its products. Loss of such competitive pricing policies would squeeze the retail end of the chain which must try to keep the consuming public happy with the lowest price possible.

An addition to pricing is Getty's Truck Card Program. For example, Getty has allowed all dealers to accept MasterCard and VISA, while it bears the cost of the service charge. Since we dealers and truck stops had previously absorbed these costs, amounting to 2.5 to 5 cents per gallon, the possible savings directly attributable to responsible Getty management is substantial. Loss of this pricing mechanism would place a severe hardship on all truck stops in the program.

Advertising.—Skelly/Getty has spent millions of dollars over the years in promoting its franchise truck stops. Its advertising has been multi-faceted, particularly on radio and in print media, including national trade publications. A special truck stop sign was developed as part of the program. Our truck stop has promoted all of Getty's advertising campaigns and I can attest to the positive effects this program has had on our business—and our profits. Unless we find a new supplier who is willing to carry on such an aggressive advertising program, we and other Getty truck stops will suffer.

I have tried to detail for you some of the key components which have made the Getty Truck Stop Program a significant marketing tool for us as a small business. I should also point out that Getty sold off its truck stops to businessmen like Mr. Day and me in the mid-1970s because the oil company was not able to operate them profitably. Obviously, then, these sales created many small businesses. We have huge investments in our facilities and inventories.

I believe it will be most difficult to change suppliers if Texaco must divest the Getty assets. But, with proper safeguards from the FTC, our business can make a transition to another oil company. When Skelly merged with Getty a few years ago, we were forced to change our operations but the basic national programs and tie-ins instituted by Skelly were maintained by Getty. We have been able to operate using the Skelly trademark and under a franchise agreement with Getty covering supply of their petroleum products. These conditions were critical in permitting our truck stop to survive that merger.

I urge these Subcommittees to recognize that the futures of a competitive downstream market I have identified must be preserved in oil mergers. If that can be done in the Texaco/Getty merger, our company can continue to prosper. Under the proposed FTC divestiture order, however, we are unconvinced that the retail end of the chain has been examined with sufficient care to achieve a satisfactory result. Mr. Day will explain what modifications and safeguards we think are necessary.

I thank the members for their attention.

PREPARED STATEMENT OF ED DAY, OWNER, B & D OIL CO.

Good afternoon, gentlemen. I am Ed Day, president of B&D Oil Company. My partner, Will Bradley has just described our business and the nature of the problems we foresee with the proposed FTC consent order.

As you can appreciate, the divestiture of Getty assets in the Central region will have an immense impact on the independent marketing sector, comprised almost entirely of small businesses like ours. We are essentially the "marketing" end of Getty. The only marketing assets truly covered by the FTC consent order are centralized operations in larger metropolitan areas, such as Kansas City, Minneapolis, Tulsa, and Des Moines. My understanding is that between 70 and 80 percent of all Getty's sales volume is through the independent marketers, of which the truck stops are a large share.

The complete picture looks like this. According to the 1983 National Petroleum News Fact Book, Getty has 4,494 branded outlets of which more than half (2,492) are supplied by 582 independent Getty marketers. The remaining outlets, many of which are independently owned, are supplied by Getty directly. As you will hear from Mr. Pratt, more than half the sale of gasoline product and 90 percent of the distillate sales from the El Dorado refinery go to branded truck stops and jobbers. Consequently, we in the truck stop industry are part of a "good marriage" with Getty in marketing refined products from El Dorado.

I raise these facts this afternoon to emphasize the great importance our truck stops place on having a supplier with a nationally-recognized brand name. In NATSO's long statement, we have explored the franchise relationship which exists between Getty and its truck stops and other retail outlets. The use of the Getty/Skelly trademark, together with the National Truck Stop Program mentioned by Mr. Bradley, have resulted in an aggressive marketing program for independent marketers serving the trucking industry. In our view, a similar marketing effort by any purchasers is required in order to make full use of the Getty assets. Otherwise, it will be impossible for the truck stops presently supplied by Getty to remain competitive in the downstream market.

It should also be clear, I submit, that the output of El Dorado must continue at present levels to meet the needs of independent retailers. Any drop-off of refined products under any new owner of El Dorado will severely hinder present truck stop customers in the Central region in our ability to be competitive. Such a reduction in output would arise because the purchaser of Getty assets might not have an equal supply of crude to run the refinery at the level Getty is today.

Some have argued—and the FTC has found in this case—that adequate sources of supply exist for any prospective purchaser to make El Dorado viable. This position may appear at first blush to be justified today, but we in the truck stop industry seriously question it. Much of the crude supply for El Dorado comes from independent producers in Kansas. If that source of supply goes elsewhere, a new purchaser would be forced to hunt for other domestic sources. If another world oil crisis descends upon this country, does any refinery have a certain supply of crude? We doubt it.

What is necessary, then, is for the FTC to make major revisions to strengthen its rather weak consent order and ensure the downstream retail market does not suffer a lessening of competition. Safeguards can come chiefly by announcing that the only acceptable purchaser or purchasers of the Getty assets must be fully integrated oil companies, as the FTC has defined that term at page 8554 of the Federal Register notice on the Texaco consent order dated March 7, 1984. Such fully integrated companies must demonstrate that: (1) they possess an adequate supply of crude to run the El Dorado refinery at its present level, and (2) they are capable and in fact intend to continue an aggressive marketing program to make use of the independent downstream marketers.

Of course, it would be possible for the list of potential acceptable purchasers to be expanded if the FTC requires Texaco to guarantee some or all of the crude supply. In our view, a ten-year guarantee by Texaco is reasonable to ensure any purchaser can maintain the current output of El Dorado.

Although other changes are also included in NATSO's recommendations for Congressional or FTC action, the basic requirement for an integrated oil company purchaser is paramount. Without a meaningful framework for approving this merger, the truck stop industry's concerns and uncertain future cannot be remedied. Mr. Bradley mentioned the success of the Getty/Skelly merger because these essential criteria were present. By contrast, I will point out to the members of these Subcommittees another merger that failed because the acquiring company was not a fully integrated oil company.

In the early 1970's, Pan American Sulphur Company (PASCO) bought the Sinclair marketing assets under what seemed to be a satisfactory FTC order in the Arco/Sinclair merger. PASCO had no previous petroleum marketing experience although its crude supplies seemed adequate. Within several years, however, the Sinclair refinery in Wyoming and marketing rights had to be sold to Little America because PASCO's lack of marketing exposed many independent retailers and jobbers to tremendous losses. Many Sinclair jobbers we know in Missouri are still trying to recover today, some seven years later.

Gentlemen, we want to prevent the same calamity from occurring here. Congress must act to force the FTC to consider the real adverse consequences on the downstream marketers and to modify its proposed consent order accordingly.

I appreciate the chance to share our experience and concerns with you.

Mr. Skelton. Mr. Harder, please.

TESTIMONY OF TED HARDER, PRESIDENT, SALINA TRUCK PLAZA, INC.

Mr. Harder. Thank you.

Chairman Skelton, Chairman Bedell, members of the subcommittee, I am pleased to be here. My name is Ted Harder, and I am the president of the Salina Truck Plaza, Inc., a member of NATSO.

I am here to explain the impacts on my business of the Texaco-Getty merger. I am not opposed to the merger as such, but I am extremely concerned about the FTC ruling which requires Texaco to sell all refining, transportation, and marketing facilities in the Midwest and Plains States. I have talked with a number of Getty accounts in Kansas, and we all feel that this action will result in greatly reduced competition in our area.

In the past several years, marketing pullouts by Sinclair, Champlin, Gulf, and Mobil, coupled with a previous pullout by Texaco, have significantly reduced competition. Marketers who were supplied by these companies either went out of business or were absorbed by other suppliers in the area. If this FTC ruling is allowed to stand, still another supplier will have left our area. I do not think the FTC fully understands these facts.

I would also like to impress upon you the effect this merger would have on my employees and the employees of more than 200 Getty truck stops in the central region, each with an employment of 30 to 90 persons. I estimate a total of approximately 12,000 employees could be affected by the ordered divestiture.

Consequently, I urge the members of these subcommittees to find a means of assisting our small businesses to retain a viable marketing program. Texaco must be required to sell these assets to a fully integrated oil company with ample crude, who is able to give each Getty account a similar competitive marketing edge we have had in the past.

I appreciate the chance to give you my views. I very much appreciate the interest each of you has shown in the problem arising from the Texaco merger with Getty. I hope you can find some solution to the difficulties I have mentioned.

Thank you.

[Mr. Harder's prepared statement follows:]

PREPARED STATEMENT OF TED HARDER, PRESIDENT, SALINA TRUCK PLAZA, INC.

Chairman Skelton, Chairman Bedell, Members of the Subcommittees, I am pleased to be here. My name is Ted Harder and I am President of Salina Truck Plaza, Inc., a member of NATSO.

I am here to explain the impacts on my business of the Getty-Texaco merger. I am not opposed to the merger as such, but I am extremely concerned about the FTC ruling which requires Texaco to sell all the refining, transportation and marketing facilities in the Midwest and Plains states.

I have talked with a number of other Getty accounts in Kansas, and we all feel that this action will result in greatly reduced competition in our area. In the past several years, marketing pull-outs by Sinclair, Vickers, Champlin, Gulf, and Mobil, coupled with the previous withdrawal by Texaco, have significantly reduced competition. Marketers who were supplied by these companies either went out of business or were absorbed by other suppliers in the area. If this FTC ruling is allowed to stand, still another supplier will have left our area. I do not think the FTC fully understands these facts.

As you may be aware, Getty truck stop operators have enjoyed the benefits of a strong credit card program and an effective advertising campaign which includes promotional materials. These programs give us a competitive advantage over other types of marketing accounts. It is very important to me as a truck stop operator that we continue to have a supplier with a national program. As Mr. Ziegler mentioned, attached to our full statement are other letters from truck stop operators pointing out the significance to them of Getty's national advertising and its tradename recognition. I call these letters to your attention to emphasize the kinds of marketing factors apparently ignored by the FTC in its examination of the adverse effects on the downstream chain.

Kansas legislators have already emphasized the impact this ruling might have on the approximately 500 employees at the Getty refinery at El Dorado if production were to be cut back or if it were to be closed. I would like also to impress upon you the effect this merger would have on the employees of the 200 or so Getty truck stops in the Central region, each with an employment of 30–90 persons. I estimate a total of 12,000 employees will be affected by this ordered divestiture. I do not know what may happen to my employees, since I have no idea who may buy the Getty assets. The same dilemma exists for every other truck stop.

I am basically opposed to legislation designed to eliminate oil company mergers from the viewpoint that stockholders may be the beneficiaries. It is obvious today, however, that it is cheaper to buy crude oil reserves than to explore for them. It would appear to be short-sighted to do our exploration on Wall Street rather than in the oil fields. It boggles the mind that oil reserves are priced so cheaply that a company is willing to walk away from a vast marketing system just to acquire the crude reserves.

Consequently, I urge the Members of these Subcommittees to find a means of assisting our small businesses to retain a viable marketing program. The way to do this is by assuring a fully-integrated oil company purchases the refinery and marketing assets of Getty. Texaco must be required to sell these assets to a fully integrated oil company with ample crude, who is able to give each Getty account a similar competitive marketing edge we have had in the past.

It is my understanding that the main reason for the FTC ruling is Getty's 50 percent ownership of the Chase Pipeline to the Denver area. Since Texaco already owns a share of another pipeline to the Denver area, this factor would have reduced the competition there after the merger. The pipeline problem is really the only anticompetitive result I see from the merger.

Perhaps, then, even Texaco could meet the criteria I have set forth to meet the needs of truck stops. In any event, I believe it is necessary for Texaco to assume responibility for supplying adequate crude oil to the company or companies purchasing the El Dorado refinery. Likewise, Texaco must also assure all Getty truck stops it will meet the obligations imposed by the Petroleum Marketing Practices Act. If these additions were included in the proposed FTC consent order, Getty truck stops would be better protected from the present uncertainties surrounding the divestiture.

I appreciate the chance to give you my views. I very much appreciate the interest each of you has shown in the problems arising from Texaco's merger with Getty. I hope you can find some solution to the difficulties I have mentioned. Otherwise, other truck stop owners and retail outlets will be here in the future to express the same concerns when other mergers are proposed and considered by the FTC.

Mr. SKELTON. Thank you, sir.

Mr. Pratt.

TESTIMONY OF RAY I. PRATT, PRESIDENT, GATEWAY MIDSTATE TRUCK PLAZA, INC.

Mr. PRATT. Good afternoon, Chairman Bedell and Chairman Skelton, and the members of your subcommittee. I am Ray Pratt. I am delighted to share with you my views of the efforts of the future oil company mergers on the small businesses like truck stops and, in particular, the effects of the Texaco-Getty merger.

I am the owner/operator of two truck stops, as well as being a Getty jobber, operating in the State of Missouri as well as the State of Illinois. I am a member of the National Association of Truck Stop Operators, as well as the Illinois Truck Stop Association, of which I serve as president. I am also a member of the Illinois Petroleum Marketers Association.

I would like to point out that there are in excess of 60 marketing facilities in the State of Illinois that are catering to the trucking industry, and 16 of these are branded Skelly-Getty. Please bear in mind that our investments usually run into the millions of dollars and, in most cases, are run by the small businessman, the backbone of our country, as well as the economy. To allow the crude supplies to fall into the control of a very few companies would be very detrimental to the trucks stops, dealers, distributors, and jobbers alike.

We feel we would become extinct if mergers continue without some safeguards designed to ensure our continued ability to compete. For this reason, I favor an adequate study of oil mergers and oil merger consequences before it is too late to do anything about the results, which will include attention to the effects on small business marketing. The importance of crude supply is equally felt in the Texaco-Getty merger.

Unless the purchaser of the Getty refinery at El Dorado, KS has an adequate supply, or one is guaranteed by Texaco at a reasonable price, I can foresee no way for this divestiture to be successful. I cannot imagine any company buying Getty's refining and marketing assets without crude to run a refinery. I question why no such guarantee provision is included in the FTC proposed consent order.

Thus, it would appear that Texaco may be buying Getty's crude reserves and seeking to liquidate the less profitable parts of the operation. That this might be the case is somewhat ironic. The El Dorado refinery and market sales and marketing assets have been very profitable for Getty, largely because of the truck stops, and other marketers have taken practically all of the output of the refinery.

We have provided these figures to the committee, and I won't repeat them at this time.

Getty has made full utilization of its refinery. A viable aggressive marketing program for truck stops goes hand in hand with a fully operating refinery. The result, at least for Getty, has been highly successful. It is also what we downstream marketers require from any fully integrated oil company who purchases the Getty assets in order for us to remain in business.

Another problem exists which no one seems to realize or appreciate. The majority of the truck stops in Illinois received financial help from the Skelly-Getty association. During late 1974 and 1975. Skelly made a concentrated effort to liquidate all truck stops in their marketing area by selling them to existing operators or others willing to become purchasers. As an inducement, Skelly either secured the financing or guaranteed the loan. Most are on a 15-year basis. Several of these loans have 5 to 6 years of payments remaining. Consequently, truck stops in this position have a concrete financial concern over the proposed merger which eliminates Getty from the picture.

If, for some reason, the divestiture should extend 12 to 30 months, we find ourselves in a very delicate position. As successor, Texaco becomes our guarantor as well as the benefactor if we as marketers should default. Without adequate supply of crude and availability of competitive products, this could very easily happen to us as small business people.

We also have no idea what happens should Texaco in fact sell the assets to another company.

What we in the downstream market are facing then is a tentative divestiture order by the FTC which seems not to understand, or perhaps wants to examine closely our problems. It should be clear that such adverse results for small business retailers are also anticompetitive. I hope these subcommittees will help us get the message through to the FTC, as well as to Texaco.

Mr. Ziegler has already mentioned the basic solution NATSO submits—are required to safeguard the downstream market without creating anticompetitive consequences in the overall merger.

To summarize, the truck stop industry believes that the FTC consent should be renegotiated to state clearly the sale of Getty assets in the central region will only be approved for a fully integrated oil company capable of running the El Dorado refinery at its present level, and which is committed to keeping an aggressive truck stop marketing program in place. We could even envision that Texaco could meet these criteria under certain conditions.

In any case, Texaco should be required to assure any purchaser of these assets of an adequate supply of crude at a reasonable price. Texaco also should assure the Getty franchisees that all PMPA obligations will be met. The FTC should not issue final approval of the merger until divestiture is completed.

Thank you for this opportunity. This concludes NATSO's testimony. We will be happy as a group to answer any questions.

Mr. SKELTON. Back in law school, Mr. Pratt, I was taught in my first year that for every wrong there is a remedy, and we searching for that today, aren't we?

Mr. PRATT. Yes, sir.

Mr. SKELTON. Mr. Hiler.

Mr. HILER. Thank you, Mr. Chairman.

I wonder if any of you gentlemen might answer, are any of you opposed to the merger?

Mr. ZIEGLER. If I might——

Mr. SKELTON. Yes, feel free to answer.

Mr. ZIEGLER. The point of view of the National Association of Truck Stop Operators and the gentlemen sitting here is that we are not opposed to the merger. Our concern, as we have attempted to state, is the FTC requirement to have Texaco sell the Getty central region, and our concern about who they might sell it to that would provide a viable marketing operation.

Mr. BRADLEY. Could I elaborate for you a moment, sir?

Mr. HILER. Yes.

Mr. BRADLEY. Are you aware—and you may or may not be—Texaco withdrew as a marketer from this approximate same marketing region a couple of years ago. I am sure they have many jobbers who went from the Texaco situation at that time and signed over to Skelly or Getty for the new supply. Now their lives are disturbed once again, as well as ours.

How many times are we going to allow a big company to withdraw? We happen to think the Midwest part of the United States is pretty darned important. I think you need to look into this withdrawal situation.

Mr. HILER. So the remedy that you would seek as it relates to this particular situation is that, when the sale of the Getty assets occurs, whoever it is sold to enter into an agreement to continue your supply contracts? Is that basically what the remedy is that you would be seeking?

Mr. ZIEGLER. Basically, that is correct, to assure a supply of crude to the El Dorado refinery, and also to maintain a marketing program within the central region that assures these men of a continued supply of fuel.

Mr. DAY. We fear the sale of the assets to somebody like a pipeline company that has no marketing whatsoever. We do not expect you to guarantee us a supplier, we will have to fight that out in the competitive world ourselves. But we do not like to be left out in the cold for up to 30 months wondering whether we should wait for a new supplier or abandon what we have and go now with somebody else. We like the system that we operate in.

Mr. HARDER. What could happen if the FTC does not modify its order is that competition will be reduced rather than leaving it level or even increasing it. If someone already in that marketing area buys those facilities, this could reduce competition.

Mr. Skelton. The gentleman's time is up.

Mr. Torres.

Mr. Torres. I have no questions, Mr. Chairman.

Mr. Skelton. Mr. Bilirakis.

Mr. Bilirakis. Thank you, Mr. Chairman.

Have we established, then, that the merger itself did not really cause the problem, or potentially may not cause the problem; it is the FTC order which requires the divestiture?

Mr. Bradley. Yes, sir.

Mr. Bilirakis. That being the case, going back to the FTC hearing—which, I trust, were held adequately enough and adequate time was afforded for them—were you gentlemen or the people in your industry given the opportunity to testify before the FTC?

Mr. Bradley. No, sir.

Mr. Bilirakis. Did you make any attempt to testify before them?

Mr. Bradley. Sir, we really were not ~~aware that it occurred~~ until after the fact.

Mr. Day. We read about the consent order in the paper. We are now trying to convince somebody that we need to be considered.

Mr. Bilirakis. If you had been given adequate notice—and I am assuming you weren't—to testify, and had testified with maybe a little bit more detail than you have here today, do you think that the FTC people would have addressed your problem in their decision?

Mr. Bradley. I think that is hard to determine, sir, because in the Sinclair-Arco merger—which is the only merger of a similar magnitude that we can look back on—the FTC thought that they were taking care of folks in that merger, and they didn't.

Mr. Bilirakis. But did they afford all folks the opportunity to testify regarding their particular special interests in their particular areas in that merger?

Mr. Bradley. There were no hearings, sir.

Mr. Bilirakis. There were no hearings?

Mr. Bradley. Not that we know of.

Mr. Day. The merger was announced one day and, a few days later, the FTC consent order was announced.

Mr. Bradley. Sir, we were at the Missouri Oil Jobbers Convention in St. Louis. The general manager of Getty Refining and Marketing's central region announced to us, his customers, in an afternoon session, that this had taken place. To that point, we had no knowledge of it.

Mr. Bedell. Would the gentleman yield?

Mr. Bilirakis. Yes, sir.

Mr. Bedell. Am I advised that the FTC did not have any public hearings on this, that they simply talked to a few people and made the decision. Is that what your testimony is indicating?

Mr. Harder. To our knowledge, that is correct.

Mr. Bedell. I don't want to impose on my colleague's time.

Mr. Bilirakis. No. That certainly is the bottom-line point, I think, that I was also leading into, that you did so much better than I, Mr. Chairman.

Mr. **Thiemann**. At the time Texaco announced that it was planning to acquire Getty, Congressman, the FTC staff took a look at the proposed merger and came up with a number of points that it thought would result in anticompetitive effects. Staff drafted a complaint which went to the Commission. Shortly after, the Commission decided to sit down and try to resolve these points of anticompetitiveness with Texaco. Those meetings were held simply between Texaco and FTC staff. It involved no one from the marketing side at all. In fact, the FTC's decision, as we contend, took no account at all of downstream marketing factors.

Mr. **Bilirakis**. Is this the result of rules, internal rules, within the FTC or regulatory—I know it is not true with all regulatory agencies. Ordinarily they would hold hearings.

Mr. **Thiemann**. That is correct. Under the consent order procedures the FTC has in place, no hearings are held.

Mr. **Bilirakis**. Is that a long-time procedure? Is that something that has been with the FTC for many years?

Mr. **Thiemann**. Yes, that is correct, Congressman.

Mr. **Bilirakis**. So it is nothing new.

Mr. **Skelton**. Let the record show that the gentleman who responded, his name is Mr. Alan Thiemann of the National Association of Truck Stop Operators.

Mr. **Bilirakis**. I have one final question, if I may, Mr. Chairman. I suppose I am running——

Mr. **Skelton**. The gentleman's time is up.

Mr. **Sisisky**. What is the timeframe, Mr. Chairman?

Mr. **Skelton**. Five minutes.

Mr. **Sisisky**. I want to explore—I don't mean this in an unfriendly manner, but I think we have to get this straight—you own the properties. OK. Somebody talked about withdrawals from the market and that Congress should have something to do about that. Of course, if an oil supplier is having problems in that market not making profit, I don't know what we could do to stop the withdrawal, to force him to market.

But is your problem right now a marketing company or supply problem? What are you concerned about?

Mr. **Harder**. We are concerned about both of them. We are concerned about that the El Dorado refinery ensuring will still receive a supply of crude after this merger, so that we marketers continue to have a source of products. We are also concerned about retaining a viable marketing program such as Getty has had in the past to support their truck stop customers, with the proper amount of advertising, promotions, and such things as this.

Mr. **Sisisky**. Let me ask you this, because I do not live in the Midwest, I do not see any Getty advertising. Do they advertise to the consumer, or is it just basically to the truck stop operators? Are they a television advertiser?

Mr. **Harder**. They certainly are.

Mr. **Sisisky**. So your concern, then, is for the brand name.

Do you think that if they do not have to divest, they would stay in that market, would Texaco stay in the market? Do you have any inclination of what would happen?

Mr. **Harder**. We have gotten two different stories on what Texaco might do, so we can't tell for sure.

Mr. **Ziegler**. The National Association of Truck Stop Operators has no indication of Texaco's intent. We are concerned. We talk about advertising, but there are other aspects to the marketing procedure. There are the credit cards, and the entire marketing structure that supports the sale of product.

Mr. **Sisisky**. The reason I asked the question is obviously 200 truck stops can't do mass media advertising, but you can do direct advertising to your customers. If you formed a co-op and got a guarantee, that you can do. Now maybe the credit card, because of the economic problem of floating that much money, would be a problem. But I am trying to get to the underlying thing.

Even if the FTC did not demand divestiture, they still may divest themselves of that market; am I correct in that?

Mr. **Day**. Texaco could always do that.

Mr. **Sisisky**. So you are left in the lurch.

The reason I asked the question about who owns the property is because, to me, I am worried about that poor guy in that corner service station that is absolutely wiped out. Can you go and find another company with adequate supply, a major supplier? You have a built-in business. They know how much gas you are pumping. It would seem to me that, if you got a national marketing company in there, that would solve your problem. Can you do that? Are they available?

Mr. **Ziegler**. Yes, we believe so. But we have to keep in mind that Texaco is operating under an order by the Federal Government to divest all assets in the 15-State region. The concerns of these men is the uncertainty of supply that divestiture order is creating, what is going to happen in this very vital part of the United States, and how it is going to impact on their business.

Mr. **Sisisky**. I guess my time is up. But maybe you misunderstood me.

Could you go to an Exxon—let's just pick a national marketing company—could you go to Exxon and say, "Look, I'm doing a million gallons in a certain period, do you want to put your gasoline in here?"

Mr. **Day**. We could do that, sir, but we might not get a positive answer. We have talked to American, and they didn't want to talk to us. We talked to several others with no results.

You see, our business is much more diverse than the service station. If we were an independent service station on the corner and our customers were within a 10- or 15-block area, it wouldn't really make any difference what the sign is. But to us, as truck stop operators, our customers come from Missouri, but they also come from Colorado, California, Montana, Virginia, and Pennsylvania. So the program that we have had Getty Company's truck stop department has truck stop guides and directories, and they have salesmen that solicit business nationwide that comes to our outlet. This is what we cannot put together with another company unless they want to assume a whole program.

Mr. **Bradley**. When you bring that up, the question of signing with another large company, we heard of this merger about February 12 or 13, and I say to you in all honesty, sir, I have not had one company call on me for my business. That fact overwhelms me because we are talking about those kinds of substantial volumes.

Mr. SISISKY. Mr. Chairman, I just have to make one statement. I am overwhelmed. I cannot believe that in a competitive business—these companies spend all this money on national advertising—why, for some unknown reason, somebody wouldn't count it. It is built in. Nobody has to speculate. They know exactly how many gallons to expect. They are not going to open up and have to advertise at an interchange or anything else. What is going on in the oil industry? I cannot believe that it could be that noncompetitive. It is unbelievable.

Mr. HARDER. There aren't many companies left.

Mr. SKELTON. Thank you.

Mr. Olin, do you have any questions.

Mr. OLIN. No questions, Mr. Chairman.

Mr. SKELTON. The next half of the panel is——

Mr. BILIRAKIS. Mr. Chairman, forgive me, sir.

Mr. SKELTON. Yes.

Mr. BILIRAKIS. I am not ordinarily this way, but I had one final question.

Mr. SKELTON. You bet. Go right ahead.

Mr. BILIRAKIS. To me it is important that we get an answer to this.

Mr. Pratt, I believe it was, made the comment—if you finalize your comment, sir, and I will paraphrase—you made the suggestion that the FTC reserve its final decision until divestiture is completed, words to that effect?

Mr. PRATT. That is right.

Mr. BILIRAKIS. What would that do for you?

Mr. PRATT. No. 1, we would be assured of a supply and know who that supplier is going to be in advance.

At this particular point, the way it is set up now, the merger will be complete, and then Texaco has 12 months to divest themselves of this—the merger will have been completed. And there are 12 months to liquidate the Midwest units.

Mr. BILIRAKIS. So the advantage lies in knowing ahead of time what the divestiture will be?

Mr. PRATT. We are going to be assured of who our supplier will be.

Mr. BILIRAKIS. Yes.

Mr. PRATT. I, likewise, would like to point out—and I said a $1 million—this gentleman here mentioned the corner service station. We are far from that. The corner service station investment runs $100,000, $125,000, maybe $150,000. We are talking about $1½ million in a facility that has restaurants, that has a truck repair facility, petroleum marketing, and a store. We can't get by like that corner station at all. We have to know where that business is coming from and who is going to be our supplier, not only today, but tomorrow, a year from today.

Mr. BILIRAKIS. Thank you, sir.

Thank you, Mr. Chairman.

Mr. SKELTON. Mr. Bradley, you have a comment.

Mr. BRADLEY. Mr. Chairman, we would simply like for this subcommittee to ask the FTC to reconsider their position before this merger is allowed to take place and divestiture to begin. That is all we ask of you.

Mr. **Skelton**. Thank you.

The next group will begin with Mr. Daziel. I ask that you offer your testimony in full, and that you briefly summarize it.

TESTIMONY OF VIC RASHEED, EXECUTIVE DIRECTOR, SERVICE STATION DEALERS OF AMERICA

Mr. **Rasheed**. Mr. Chairman, I wonder if I could impose and perhaps lead off and——

Mr. **Skelton**. Any way you desire. Go right ahead, please.

Mr. **Rasheed** [continuing]. Perhaps Mr. Daziel could follow.

Mr. **Skelton**. Mr. Vic Rasheed.

Mr. **Rasheed**. Thank you, Mr. Chairman.

My name is Vic Rasheed, and I am executive director of the Service Station Dealers of America. We represent approximately 60,000 retail dealers across the United States.

I must say that this is a pleasure and a privilege to testify before you, particularly in light of the fact that I get to see my old friend, Mr. Bedell—I am sorry, Mr. Bedell, I should have said my friend, Mr. Bedell.

Mr. **Bedell**. You were right the first time. [Laughter.]

Mr. **Rasheed**. It is very inspiring to us in the small business field when we are able to see Mr. Bedell's benevolent face showing concern for our cause.

We believe that the main impact of the mergers will focus on the retail service station industry and its customers. We regret that the great concern that this committee shows for the small businessmen involved does not appear to be shared by the Federal Trade Commission.

There were no public hearings before the consent order was issued in the Texaco-Getty merger. Service station dealers or their representatives were never invited to participate in any such hearing, even though we were the people most directly impacted. As I understand it, there were discussions by the Federal Trade Commission and the oil companies involved, but that evidently did not extend to us.

The current merger wave—which seems to be intent on locking up domestic sources of crude, which used to be the life's blood of independent refiners—comes at a time when there are other disturbing trends. In recent years, several of the major oil companies have been busy buying up whole chains of independent gasoline outlets. BP-Sohio's acquisition of Gibbs Oil in New England and Marathon's purchase of several chains in South Carolina are cases in point.

Just 2 weeks ago, an industry newsletter said that, "Majors are on a station-buying spree on the west coast," with outlets owned by independents as the main targets.

Incidentally, let me set the record straight. The corner service station is no longer $100,000. Most of my dealers here have investments which probably represent anything from $250,000 to $500,000. So these are not small items we are trading.

For several years now, the major refiners have been driving their own wholesale and retail distributors out of certain markets so the oil companies can have those markets for themselves. All of this points to a very strong path of eliminating from the industry anyone who is not a large integrated refiner.

I heard the statement wherein the Congressman expressed amazement that no one had stepped in as an alternate supplier to the people deprived in the Midwest. Actually, that is the whole point and purpose of this hearing. That is what we are concerned about. We know what is happening. We have been saying for some time, the majors are dividing up the country into certain areas—this is for you, this for me, and this is for us. There will be no competition in those areas. The only person you deal with is the franchisee, shall we say, the person who has control of that area. That is why there will be no competition. We are just moving progressively toward that stage. I think that if we would stop right there, we would have the intent of the mergers.

We have seen the scenario already take place in other countries. In Canada, for example, we have six refiners who now control the retail market. They control supply. Everything comes out of their refineries.

It may surprise you to know that, as a result of this, 90 percent of all retail gasoline prices in retail service stations in Canada are now set directly by the refiners. The former independent dealers are now commissioned agents. They just set the price at the price they are told to set it at.

As this committee knows, we have been warning about the disappearance of independent businesses in the petroleum industry for some time. The other people scheduled to testify today will discuss the implications of independent crude supplies, independent refiners, independent chain marketers disappearing.

Our people are adversely affected by the two largest mergers that have been announced to date, the Texaco-Getty and the Chevron-Gulf mergers. The Getty takeover affects over 2,000 dealers and jobbers, while the Gulf takeover involves over 15,000 small businesses. We don't know how many stations will be divested, nor the numbers of dealers who will be left like fish on a beach without either a station or a trademark, or perhaps without supply.

We do know that, without a refiner trademark, our dealers will be left without any protection under the Petroleum Marketing Practices Act. They will be completely helpless. They will be sitting there waiting for anyone—they will just simply be sitting without any legal protection at all. They will be left at the mercy of the oil companies that did supply them.

We have heard that Texaco may sell its Getty trademark to PowerTest. If this happens, the Getty dealers will not have a trademark that is owned by a major refiner. The Getty dealers will have no PMPA protection. They will be at the mercy of PowerTest.

We do know also that the FTC consent orders seem to be written primarily by the oil companies affected. The only people who have had input to FTC have been those oil companies which are involved in the mergers or the acquisitions. So it seems to be a very one-sided consent order.

We have studied the FTC consent order in the Texaco-Getty merger. Nowhere in that 60-page document is there any mention of how the disposition of some 1,900 retail outlets will affect the business interests of the independent marketers, that is dealers and jobbers, involved or how the services which they provide to their customers will be protected.

To date, the thousands of independent marketers affiliated with the oil companies being acquired in today's mergers have been treated as surplus baggage to be thrown overboard if they get in the way of closing the deal. We urge this committee to recognize that these gasoline dealers and jobbers are not plastic pieces on a Monopoly board. They are independent businesses with real, live people, who are trying to make an honest living by serving their local communities. At the very least, they should be given the first option to purchase their locations which the companies must divest.

Instead, we see 600 branded Getty dealers in the Northeast—and some of their representatives are here—being turned over to a small nondescript marketer, PowerTest, which is being loaned money, $80 million, by Texaco to purchase them.

Many of these dealers are frustrated at being abandoned by Getty and outraged by Texaco's callous disregard of their interests. Already we are receiving complaints from some of these Getty dealers that their 3-year leases have just been reduced to 1 year. Some are now being threatened with franchise termination if they do not increase their gasoline sales. We anticipate many more complaints.

The Texaco-Getty consent decree not only completely ignores the interests of small business operations, but it outlines a plan that is harmful to the public interest.

Mr. BEDELL. Excuse me, Mr. Rasheed.

Mr. RASHEED. Yes.

Mr. BEDELL [presiding]. I feel very badly about this, but I need to tell you the situation. There is a tax bill down on the floor on which we had a promise from the Ways and Means Committee that they would take care of a small business problem. It appears that they have not taken care of the problem that they promised us they would take care of, and I really need to get down there to try to do what I can, and I am sorry.

Mr. Olin said he will chair the hearing. I am terribly sorry this happened, but it is something I just almost have to do. It is about as important a small business issue as we have.

Mr. RASHEED. I think we understand, Mr. Bedell. Again, we thank you for your concern.

Mr. BEDELL. I will get back to you just as quickly as I possibly can.

Mr. RASHEED. Thank you again.

Mr. OLIN [presiding]. You may proceed, Mr. Rasheed.

Mr. RASHEED. Thank you, Mr. Olin.

The Texaco-Getty merger will result in less competition in the marketplace. It allows Texaco-Getty to eventually cut off a major source of crude oil that is vital to independent refiners on the west coast, and it threatens the continued operation of the El Dorado in Kansas, which is a major source of unbranded gasoline in that area.

Also, the consent order directs the divestiture of Getty stations and truck stops in the Midwest. This is an area where Texaco had already withdrawn and had no market share. We will have some testimony on that.

On the east coast, we have Getty stations being turned over in a block to PowerTest, and Texaco will be allowed to retain 30 of Getty's most successful stations.

Texaco is allowed to keep its growing network of company-operated stations while it is required to divest service stations operated by independent businessmen. We certainly are not very happy about that.

None of this makes any sense to us. None of this does a thing to protect or enhance competition. None of this helps independent businesses or the public. There is a simple straightforward way that small businesses and consumers could be helped by a properly crafted consent order. We have described this in our comments to the Federal Trade Commission, and we have attached a copy.

The following is a brief summary of our recommendations as to how a major consent decree should be structured.

First, we support an amendment to the Petroleum Marketing Practices Act which would guarantee that the dealer's rights under PMPA could not be taken away by any merger action—that is, they would continue to have those rights they have today.

Dealers located in any station being divested should be given a 90-day option to purchase their location at fair market value. The acquiring company in the merger should be required to help dealers finance purchasing their stations, much as Texaco has done with PowerTest.

In any area affected by the mergers, all company-operated outlets should be divested before any independent service stations are eliminated.

Our proposal would strengthen the position of independent businesses in the retail marketplace. It would create a legion of price conscious wholesale purchasers who currently are captive customers. It would assure local communities of continued service by their established businesses. In short, it would do everything that the Texaco-Getty consent decree does not do.

We urge this committee and the Congress as a whole to find out why the Federal Trade Commission has ignored the concerns of thousands of small businesses that are directly affected by the pending mergers. We urge you to see that the interests of the small business community and motorists are better protected in any future mergers.

Again, Mr. Chairman, we thank you for the time that you are giving us, and we hope that you will seriously consider our problems.

Mr. Olin. Thank you.

[Mr. Rasheed's prepared statement with attachments follow:]

PREPARED STATEMENT OF VIC RASHEED, EXECUTIVE DIRECTOR, SERVICE STATION DEALERS OF AMERICA

The Service Station Dealers of America represents approximately 60,000 small businesses providing service to the motoring public in all parts of the United States and Puerto Rico. We commend this committee for its interest in the impact of the current oil company merger wave on small businesses and the communities they serve. We regret that your concern does not appear to be shared by the Federal Trade Commission.

This current merger wave, which seems to be focused on locking up domestic sources of crude which used to be the lifeblood of the independent refiners, comes amid other disturbing trends. In recent years, several of the major oil companies have been busy buying up whole chains of independent gasoline outlets.

BP/SOHIO's acquisition of Gibbs Oil in New England and Marathon's purchase of several chains in South Carolina, are cases in point. And just two weeks ago, a petroleum marketing industry newsletter reported. "Majors are on a station buying spree on the west coast, with outlets owned by independents the main targets."

For several years now, we have watched in alarm, as many of the major refiners have been driving their own wholesale and retail distributors out of certain markets so the oil companies can have those markets for themselves. All of this points to a very strong pattern of eliminating, from the petroleum industry, anyone who is not a large, integrated refiner.

As this committee knows, we have been warning about the disappearance of independent businesses in the petroleum industry for some time now. We appreciate the support you have given us in the past and we hope you can help now, as the problem suddenly becomes much more acute.

Others scheduled to testify today undoubtedly will discuss the implications of independent crude supplies, independent refiners, and independent chain marketers disappearing. We will focus on what we know best—the small, independent retailer.

Our people are immediately, adversely affected by the two largest mergers that have been announced to date, the Texaco-Getty and Chevron-Gulf cases. The Getty takeover affects over 2,000 dealers and jobbers while the Gulf takeover involves over 15,000 small businesses.

We have studied the FTC consent order in the Texaco-Getty merger. Nowhere in that 60 page document is there any mention of how the disposition of some 1,900 retail outlets, will effect the business interests of the independent marketers, (dealers and jobbers) involved, or how the services which they provide to their customers will be protected.

Thus far, the thousands of independent marketers affiliated with the oil companies being acquired in today's mergers, have been treated as surplus baggage, to be thrown overboard if they get in the way of closing the deal. We urge this committee to recognize that these gasoline dealers and jobbers are not plastic pieces on a monopoly board. They are independent businesses, with real live people involved, who are trying to make a honest living by serving their local communities. At the very least, they should be given the first option to purchase their locations which the companies must divest.

Instead we see 600 branded Getty dealers in the Northeast, being turned over to a small, nondescript marketer, PowerTest, which is being loaned the money to purchase them by Texaco. Many of these dealers are frustrated at being abandoned by Getty and outraged by Texaco's callous disregard of their interests.

Already, we are receiving complaints from some of these Getty dealers that their 3-year leases have just been reduced to one year. Some are now being threatened with franchise termination if they do not increase their gasoline sales. We anticipate many more complaints.

Quite frankly, the Texaco-Getty consent decree is very disturbing. Not only does it completely ignore the interests of the small business operators, it outlines a plan that is harmful to the public interests. The consent decree will result in less competition in the marketplace.

First, it allows Texaco-Getty to eventually cut off a major source of crude oil that is vital to independent refiners on the west coast. Then, it threatens the continued operation of the El Dorado refinery in Kansas, which is a major source of unbranded gasoline in that area.

Also, the consent order directs the divestiture of Getty service stations and truckstops in the Midwest. This is in an area where Texaco had already withdrawn and had zero retail share.

Finally, on the east coast, we have the Getty stations being turned over in a block to a company that will be heavily dependent upon Texaco for financing and product. In addition, the consent decree allows Texaco to retain 30 of Getty's most successful stations.

In the name of reducing the company's control over the retail market, Texaco is allowed to keep its growing network of company-operated gas stations while it is required to divest service stations operated by independent businessmen.

None of this makes any sense to us. None of this does a thing to protect or enhance competition. None of this helps independent businesses or the public.

There is a simple, straight-forward way that small businesses and consumers could be helped by a properly crafted consent order. We have described this in our comments to the FTC (copy attached). The following is a brief summary of our recommendations for how a major consent decree should be structured, from our perspective.

1. Dealers located in any station being divested should be given a 90-day option to purchase their locations at fair market value.

2. The acquiring company in the merger should be required to help dealers finance station purchases (as much as Texaco is extending to power test).

3. In any area affected by the merger, all company-operated motor fuel outlets should be divested before any independent service stations are eliminated.

4. Wholesale distributors franchised by the merging oil company should be freed of all restrictions on geographic marketing areas and motor fuel purchase contract volumes.

5. Service stations retained after the merger, should be allowed to purchase motor fuel on the open market from the most competitive source.

Our proposal would strengthen the position of independent businesses in the retail marketplace. It would create a legion of price-conscious wholesale purchasers who currently are captive customers. It would assure local communities of continued service by their established busineses. In short, it would do everything that the Texaco-Getty consent decree does not.

We urge this committee and the Congress, as a whole, to find out why the Federal Trade Commission has ignored the concerns of thousands of small businesses that are directly affected by the pending mergers. We urge you to see that the interests of the small business community and motorists are better protected in any future considerations.

And we thank you for your continuing commitment to help us in our struggle to provide efficient, convenient service to the public.

SSDA SERVICE STATION DEALERS OF AMERICA,
Washington, DC, March 27, 1984.

Mr. JAMES C. MILLER III,
Chairman, Federal Trade Commission,
Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Service Station Dealers of America, I wish to file comments regarding the proposed acquisition of Getty Oil Co. by Texaco, Inc. and the related Federal Trade Commission consent order. This matter carries FTC file no. 841-0077.

SSDA represents approximately 60,000 retail gasoline dealers throughout the United States and Puerto Rico. Many of our members are directly affected by the Texaco-Getty merger and the consent order.

While we are opposed to the merger in principle, the chief purpose of this letter is to advise you of our specific concerns regarding the probable adverse impact the consent order will have on our members. If the merger is allowed to proceed, we believe some modifications ought to be made in the consent order, to mitigate the harm that will be done to many hundreds of small businesses and the customers they serve.

Our specific recommendations for revisions in the consent order come later in this letter. First, I will provide a brief explanation of why we oppose the merger itself.

Although some of the recently proposed mergers in the oil industry, including Texaco-Getty, are alarming because of their size, they become of even greater concern when viewed in the broader context of what is happening in the domestic petroleum products industry. There we see a continuing dramatic erosion of the independent (i.e., not affiliated with a major integrated refiner) sector at every level of the industry.

Independent retailers and wholesalers have complained for several years now, that the major oil companies are pushing them out of the downstream end of the industry, employing a wide range of unfair but not illegal business practices. The amount of gasoline sold directly to end customers by the oil companies has risen markedly in recent years. In the past 10 years the number of retail dealers supplied by refiners has been decreased by 59% and their sales have declined by 36%. Refiner direct retail operations on the other hand have increased by 14% and their sales climbed 86%.

This trend has been accelerated lately by several refiners buying up whole chains of previously-independent retail outlets. At the wholesale level, some refiners have imposed conditions on their jobbers which essentially prohibit the jobbers from expanding their business or from competing directly with their franchiser in certain markets.

The several oil company mergers that have been proposed in recent weeks, and which are being reviewed by the FTC, threaten to further weaken the independent sector of the gasoline marketplace by tightening the major integrated refiners' control of the upstream position of the industry.

In the immediate case of the Getty takeover, we face the disappearance of a company that is a major supplier of crude oil to independent refiners on the West Coast and a major supplier of refined product in the Midwest and Great Plains. The proposed consent order acknowledges this problem, but offers only temporary solutions and gives no assurance that those independents who currently depend upon Getty for crude oil or refined product, will be able to find as strong or as dependable a supplier in the future.

You may recall that a similar issue was raised several years ago, when Mobil sought to acquire Marathon, which also is a major supplier of refined product to independent marketers. Because of Mobil's well-known dislike for supplying independents, the deal fell through. Now, we see Mobil seeking to acquire Superior Oil, the largest independent supplier of crude oil in the United States. What is the difference? If Mobil can complicate the crude oil supplies of independent refiners, is that any better than if they choked off the refined product directly?

It is obvious that independent refiners will be forced to depend more and more upon the major integrated refiners for their crude oil. Thus, they will have to buy their raw products from the very same companies against whom they must then compete for the sale of finished product. Those of us who represent the downstream end of the industry, where we have struggled for years to compete against our own suppliers, can tell you that the independent refiners are in for a very tough time. We can also tell you that we are deeply concerned by the inevitable lessening of our own choices among the surviving suppliers of refined product.

Our feeling is that the Texaco-Getty merger should be blocked. Barring that, there are some changes that should be made in the consent order which would make the merger less onerous to marketers.

It troubles us that nothing in the consent order acknowledges the fact that nearly 2,000 independent businesses are located on premises leased from, or operate under the franchise of Getty Oil. These small businesses—the service station dealers we represent and the jobbers who serve them—are dealt with only as a problem to be disposed of. And that is what is proposed in the consent order, that these businesses be sold en masse, without regard to the interests of the businesses that are being traded around like baseball cards. This is wrong.

Presumably, the purpose of ordering Texaco-Getty to divest itself of large numbers of service stations, is to protect or enhance competition in the markets they serve. We believe this goal can be accomplished far more effectively and with far less disruption to small business and local communities, if you abandon the mass sale concept enbodied in the consent decree and pursue an alternate path.

We urge you to strengthen the independence of the small businesses involved and to help make them stronger competitors in the marketplace. This can be accomplished at no cost to the public and with no disruption to business. It will be far better for the economy then to take 600 Getty outlets and turn them over to a highly-leveraged, nondescript marketer who probably will have to resell some of the locations anyway. (See the attached article.)

We believe the proposed transfer of 600 Getty stations to the control of Power-Test Corp., should be stopped. Instead, the following actions should be taken to enhance competition in the market served by these stations.

First, Texaco/Getty should be required to offer the existing Getty dealers their facilities at fair market value. If this cannot be agreed upon by the parties, three independent appraisals should be submitted to arbitration. These small businessmen would then be able to arrange their own supply agreements with other refiners. This will provide consumers to get the lowest prices at those locations. PowerTest could also bid for their business.

Second, any existing Texaco dealers who would lose their locations as a result of the merger should also be given the option to purchase their stations. As with the Getty dealers, each dealer should have an option to purchase the particular site where he/she does business, without getting involved in a bundled transaction.

Third, Texaco should assist in the financing of dealers who wish to purchase their stations. News reports indicate Texaco is prepared to extend over $80 million credit to Power Test. It should also consider setting up a fund at 10% for 30 years to fund the sale of locations to those small businesses who helped build up the company.

Fourth, in all areas where dealers are affected by the merger, Texaco should divest itself of company-operated service stations. If the problem of marketplace control is so acute, why do we see independent dealers being divested and company-run stations being retained? Logically, the marketplace would benefit most from a leassening, not an increase, in the amount of business the major refiners control directly.

Fifth, all Texaco/Getty stations should be able to purchase, store and sell motor fuel obtained on the open market from the most competitive source. If you want to see real competition, open those facilities up to be supplied by the lowest bidder rather than by the leaseholder alone.

Sixth, all Texaco and Getty wholesale distributors should be allowed to sell motor fuel in all market areas and to all prospective customers. If the objective is to enhance competition, these independent businesses ought to be freed of refiner-imposed restrictions on where and how they may compete.

At the marketing end of the petroleum industry, the single greatest harm to consumers comes from the fact that refiners are able to dictate the prices and conditions for the purchase of product by tens of thousands of retailers and jobbers. These small businesses are a captive market, and consumers suffer as a result.

We urge the Commission, if it must approve the Texaco-Getty merger, to use the consent decree as a way of loosening the refiner's control over its captive market. Afford the small business community at least some measure of relief by strengthening our independence.

Sincerely,

VIC RASHEED, *Executive Director.*

Enclosure.

[From the Wall Street Journal, Apr. 3, 1984]

GULF'S 15,000 GAS-STATION OPERATORS FACE CLOUDY FUTURE IF MERGER PLAN IS APPROVED

(By J. Ernest Beazley and Doron P. Levin)

Bennie McCurley and 40 other Gulf gas-station operators were swapping marketing ideas over drinks at Atlanta's Ritz-Carlton Hotel last month when the news came. Standard Oil Co. of California had agreed to buy Gulf Corp. for $13.3 billion.

"There were a lot of long faces," says Mr. McCurley, who has run his lucrative station in Atlanta's affluent Buckhead section since 1971.

The long faces remain. The 15,000 Gulf-station operators across the nation aren't sure whether Gulf's familiar name and orange logo will survive the merger. Many fear that Socal, whose 12,000 gas stations operate under the Chevron brand name, will have to divest itself of the Gulf stations if it runs into federal antitrust objections. Others fear that even if the government unreservedly approves of the merger, Socal will decide to close, at the very least, those Gulf stations that compete with Chevron dealers.

A Chevron retail-marketing executive says that company expects to divest itself of "some" stations as part of an agreement with the Federal Trade Commission, which is reviewing Socal's acquisition.

For Mr. McCurley, the merger is particularly worrisome. He can gaze out his window at the nearest Chevron station—just across the street. By chance, the same day the merger was announced, Gulf completed as $150,000 face lift of his Gulf Car Care Center, equipping it with the latest in high-tech gas-retailing hardware.

"A merger's got to hurt us bad. It's got to," Mr. McCurley says.

If the travails of Getty Oil Co. dealers are any indication, Mr. McCurley may be right. After Texaco Inc. acquired Getty in February—as in in the Socal-Gulf deal, the main purpose was the acquisition of oil reserves—the FTC ordered Texaco to spin off two Getty refineries and the bulk of its retail outlets. Texaco then agreed to sell the 1,900 Getty stations to Power Test Corp., a relatively obscure cut-rate chain with only 460 stations along the East Coast.

That sale, though not final, has triggered an uproar among many Getty dealers, and for the same reasons that now concern Gulf dealers. John Denelli, who leases his Williamstown, Mass., station from Getty, worries about losing the familiar Getty name. "If the Power Test name goes up, it's going to hurt a lot," he says.

Another dealer believes that Power Test, which both operates and franchises stations, will refuse to renew dealers' leases when they expire, choosing to close some stations and to operate others itself. "They'll try to take these guys and push them right out the door," says Walter Szczublek, a Getty-station operator in Jersey City, N.J., who has decided to get out of the business after 14 years.

"There are a lot of disadvantages to being with a Power Test," says Vic Rasheed, the executive director of the Service Station Dealers of America, "and a lot of advantages to a major brand like Texaco or Gulf." He was alluding to such things as a big company's credit card, advertising and training and its popular product lines, like Gulf motor oil.

Lec Liebowitz, Power Test's president, acknowledges the controversy but argues that dealers are worrying unnecessarily. He says he won't drop the Getty name, and he promises to examine leases on an individual basis. "The dealers may do even better with a new, fresh outlook," he says.

While it isn't yet known how the FTC will alter terms of the Socal-Gulf merger, it is all but certain that much of Gulf's refining and marketing assets wouldn't remain part of Socal. Based on 1983 retail sales, the merger would vault the nation's sixth (Gulf) and eight (Chevron) largest marketers into first place with a 10.4% market share. Last year's leader was Standard Oil Co. (Indiana), with a 7.2% share.

Concern is especially great in the 11 states where the combination would have its highest market shares: Alabama, Arizona, Florida, Georgia, Kentucky, Maine, Mississippi, Nevada, New Mexico, Tennessee and Texas. Says Mr. McCurley of Atlanta, who like most U.S. service-station operators leases his station, "I've been in the business long enough to know that the government isn't going to let two Chevron stations operate across the street from each other."

In fact, both Gulf and Socal were cutting back their retail fleets even before they agreed to merge.

Not all Gulf dealers are especially fearful of the merger. Thomas Flannery, who leases a Gulf station in Pittsburgh, says he "sighed with relief" when he heard that the Gulf buyer was Socal. "Chevron doesn't have much in Pennsylvania," he notes.

Besides, he adds, "I'm a dealer with a good location and I'm going to do a lot of volume no matter what company I'm with."

[See appendix for additional submission of Mr. Rasheed.]

Mr. OLIN. Why don't we just proceed down the table, if that is OK. We will let the four of you speak, and then we will have questions for all four.

TESTIMONY OF AL DAZIEL

Mr. DAZIEL. Thank you, Mr. Chairman.

I have trouble with my voice today. I will try to do as well as I can.

I am Al Daziel from Cedar Rapids, IA, a community of about 125,000 people. My service station and my town have been directly impacted by both mergers and pullouts. They are very integrated in the way they work together. I don't think that the FTC can consider mergers until they look at what the pullouts have been.

For instance, we have lost Gulf, Shell, Texaco, and Citco in my marketing area. We have dealt with mergers in which DX was merged by Sun and Skelly was merged by Getty, and now Texaco. We have had Champlin being merged with Fina and Sinclair with Arco. So we have been dealing with a lot of mergers and a lot of pullouts, and it has dramatically affected the service stations in Cedar Rapids, IA.

On my street, I had a Skelly station about a half of a mile away in either direction. When Getty and Skelly merged, the two Skelly dealers were economically evicted by Getty. One station was closed, the other became company operated. The closed station has remained closed for some time. I recently tried to buy the closed station, and it was offered to me by Getty with a 20-year no-gas clause as a deed restriction. This clearly points out they are not too concerned about competition in the area.

The remaining Skelly or Getty, or now possibly Texaco, dealers in the area have had their franchises dramatically devalued by having higher company concentrations of company-operated stations. So their gallonage has dropped because of the pricing situation, plus the credit card has been dropped by Getty. They no longer have a credit card program. That has also hurt their businesses.

But the point is that all of the actions of both mergers and pullouts has lessened the amount of competition, they have lessened the choice of the consumer of the brands that they can pick and choose from, but most importantly, it has dramatically lessened the number of people who set the price of gasoline on the street in our community.

Thank you.

Mr. OLIN. Thank you.

Mr. Raoul Youssef.

TESTIMONY OF RAOUL YOUSSEF

Mr. YOUSSEF. I am Raoul Youssef from Missouri and, if you would ignore my size, I am also a small business concern.

On behalf of our Texaco and Getty dealers in the States of Missouri and Kansas, similar situations have taken place in the metropolitan area of Kansas City. Up to just 3 or 4 years ago, we had 60 Skelly dealers over there. They were taken over by Getty in that merger, and the net result was we have less than 12 dealers over there and a lot of company operations.

In the eastern part of the State where we have Texaco, with quite a few dealers a few years ago, now we have very, very few Texaco dealers and a lot of company operations.

Our problem is—we don't understand all these merger problems—but we have lost 90,000 dealers since 1972, and a lot of the existing dealers have a foot in that graveyard, and we don't need a little bit more of a nudge from Texaco, Getty, or whoever to put us back into that graveyard.

We need your help in getting the FTC to recognize when they are going to divest somebody, let us start divesting company operations first. By doing so, it will at least be leaving some competition with the dealers, and serving the public a lot better than these gas-and-go stations.

Basically, if they would have to divest from dealers, at least give them the chance or the opportunity to buy that station. He deserves that much. He is squeezed into a big power play and he doesn't understand where it starts and where it ends.

So we call upon you to help the dealer.

I appreciate it. Before I finish, I have a prepared statement from our executive director. He didn't have a chance to come and testify on the panel. I would like to include it in the record if you don't mind.

Mr. OLIN. Your statement, without objection, will be included in the record.

[Mr. Lauer's prepared statement follows:]

PREPARED STATEMENT OF LEE LAUER, EXECUTIVE DIRECTOR, PRO AUTOMOTIVE ASSOCIATION OF MISSOURI AND KANSAS

My name is Lee Lauer, executive director of Pro Automotive Association of Missouri and Kansas. We represent service stations and repair outlets. Our purpose in appearing before the committee is to express a real concern that exists if the Texaco-Getty merger is approved the way it appears to be headed.

Two years ago, Texaco pulled out of a good portion of the Midwest. In 1983, Mobil pulled out of some of the same areas. Standard and Getty, which was Skelly, plus some independent marketers is all that is left to competition. With the idea of selling off Getty, what we will have left is basically Standard Oil and some independent retailers trying to compete without the El Dorado refinery as a source of supply.

What we think is a better solution is to have Texaco divest itself of its company operated units in the affected areas and turn the Getty stations over to dealers. That solution restores competition, allows small businessmen to survive, and helps keep a monopoly from occurring. Anything short of this approach will result in the loss of small business, eliminate competition, the obvious result can only be higher prices to the citizens in the areas afforded.

Mr. CONTE. Mr. Chairman?

Mr. OLIN. Mr. Conte.

Mr. CONTE. I want to welcome my good friend from Massachusetts, James Ayotte, director of the Bay State Gasoline Retailers Association. The Bay State Gasoline Retailers and I have had a very long and friendly relationship. Mr. Ayotte was most gracious in rearranging his schedule to be here today. I want to thank you for coming.

I am sure that all of you are going to make a great contribution to this committee.

I am sorry that I am in and out, but as ranking Republican on appropriations, I have 13 committees to run to, so it isn't because I am not interested. My counsel will take everything down.

Mr. OLIN. Your timing is very good, Mr. Conte.

Mr. CONTE. Thank you.

Mr. OLIN. Mr. Ayotte, you may proceed.

TESTIMONY OF JAMES R. AYOTTE, EXECUTIVE DIRECTOR, BAY STATE GASOLINE RETAILERS ASSOCIATION

Mr. AYOTTE. Thank you, Mr. Conte. It is my pleasure to be here.

My organization represents the retail service station dealers of Massachusetts. I am here today in support of oil company merger restriction legislation.

Restrictions on oil company mergers and buy-outs must be imposed so that the impact of these business dealings can be assessed thoroughly and without prejudice. To weigh the impact of oil company mergers in terms of overall economic activity only imposes a grave injustice on the small business segment of our economy.

In the State of Massachusetts, the Texaco-Getty merger will have a devastating negative effect on retail service station dealers. There are currently 243 branded Getty dealers in Massachusetts. Getty dealers represent roughly 8 percent of the total retail dealer population in the State.

To this point, Getty dealers have not been taken into consideration by either Getty or Texaco. In fact, it appears that the Getty-branded lessee dealers will be forced to vacate their stations and seek employment elsewhere. This displacement is totally unnecessary, unfair, and not in anyone's best interest except Texaco and their new merger partner, PowerTest Corp.

Even before the Texaco-Getty merger receives FTC approval, Texaco has already negotiated a deal with PowerTest. The irony of the whole deal is that Texaco will finance the PowerTest venture.

Is Texaco actually divesting retail locations in order to increase competition in the Northeast? The answer is an emphatic no. By selling the Getty locations as a block and then, in turn, financing the sale, Texaco, in no uncertain terms, is increasing their control over the retail market. PowerTest will have no choice but to be a puppet for their fronting company, Texaco. This business deal will displace countless numbers of service station dealers, their families, and their employees, while increasing the total market concentration of Texaco.

Who is PowerTest Corp? PowerTest is a Long Island-based jobber who operates most of their locations as gas-and-go operations. They don't sell service, they sell gasoline only. They are a closely-held corporation that hires employees to run their gas outlets. Since the company controls the operation and the retail price of their own gas outlets, retail competition will be decreased by their widespread presence. I have had no direct dealings with PowerTest, and cannot personally attest to their business practices. However, it appears that, through their own stations—their retail prices are very competitive—but service station dealers who buy from them often complain that they are paying a higher price. If this is the case, we are going to see an increase in retail prices to the people in Massachusetts.

I am hard pressed to understand why Texaco has not approached the affected Getty dealers and offered them the option of purchasing their businesses. It only makes sense to allow the people who have been loyal lessee dealers of Getty Oil Co. the opportunity to continue to do business in the marketplace.

Although I am not privy to Texaco's business plan, I would guess that they are looking to have their cake and eat it too. This will be at the expense of the Getty service station dealers and their customers. In my opinion, Texaco has not offered a fair plan to divest Getty's Northeast retail holdings. Their PowerTest agreement is evidence that they are unwilling to put forth a fair merger proposal.

The service station dealers who are affected by the Texaco-Getty merger must be given the opportunity to buy their businesses. Anything less than that is criminal.

I am here today because the dealers of Massachusetts have a serious problem. How can I explain to Getty dealers who have been in business for over 30 years that they are victims of merger-mania, and that there is nothing we can do about it? It is unconscionable to expect a man to assume the risk and hard work of running his own small business, and then be kicked out after years of service because the company wants to increase their control of the retail market.

We have often contended that the small service station dealer is on a pawn in the big oil company power game. The correctness of this statement is more evident now than ever before.

The people who have the power to decide on the fairness of the Texaco-Getty merger must take into account the service station dealer. Restrictions on oil company mergers are necessary to study the impact of mergers on the entire economy. The first option to purchase the service station location must be awarded to the service station dealer. It makes more sense to have businesses run by 243 independent small businessmen, rather than have 1 company, PowerTest, who sold their allegiance already to Texaco, assume control over all Getty locations in Massachusetts.

Small business is the backbone of competition in our economy. We have a responsibility to promote fair competition and to protect the best interest of the public and small business sector of our economy. The best way to assure that these responsibilities are met is by making sure that the present service station operators are given the right to purchase their stations if they so desire.

Thank you.

Mr. Olin. Thank you, Mr. Ayotte.

[Mr. Ayotte's prepared statment follows:]

Prepared Statement of James R. Ayotte, Executive Director, Bay State Gasoline Retailers Association

Good afternoon, Mr. Chairman and committee members. My name is James R. Ayotte. I am executive director of the Bay State Gasoline Retailers Association. My organization represents the service station dealers of Massachusetts.

I am here today in support of oil company merger restriction legislation. Restrictions on oil company mergers and buy-outs must be imposed so that the impact of these business dealings can be assessed thoroughly and without prejudice.

To weigh the impact of oil company mergers in terms of overall economic activity only, imposes a grave injustice on the small business segment of our economy.

In the State of Massachusetts the Texaco/Getty merger will have a devastating negative effect on the retail service station dealer. There are currently 243 branded Getty dealers in Massachusetts. Getty dealers represent roughly 8% of the retail gasoline market in terms of service station population in Massachusetts.

To this point, the Getty dealers have not been taken into consideration by either Getty or Texaco. In fact, it appears that the Getty branded lessee dealers will be forced to vacate their stations and seek employment elsewhere. This displacement is totally unnecessary, unfair and not in anyone's best interest except Texaco and their new merger partner, PowerTest Corp.

Even before the Texaco/Getty merger receives FTC approval, Texaco has already negotiated a deal with PowerTest to sell off their Getty locations. The irony of the whole deal is that Texaco will finance the PowerTest venture.

Is Texaco actually divesting retail locations in order to increase competition in the northeast? The answer is an emphatic no! By selling the Getty locations as a block, and then in turn financing the sale, Texaco, in no uncertain terms, is increasing their control over the retail market. PowerTest will have no choice but to be a puppet for their fronting company, Texaco. This business deal will displace countless numbers of service station dealers, their families, and their employees, while increasing the total market concentration of Texaco.

Who is PowerTest Corp? PowerTest is a Long Island based jobber who operates most of their locations as gas and go operations. They don't sell service, they sell gasoline only. They are a closely held corporation that hire employees to run their gas outlets. Since the company controls the operation and price of their own gas outlets, retail competition will be decreased by their widespread presence. I have had no direct dealings with PowerTest and cannot personally attest to their business practices. I have heard, however, that retail prices of their own company operations are quite competitive, but their prices to independent service stations are inflated, which causes higher retail prices.

I am hard pressed to understand why Texaco has not approached the affected Getty dealers, and offered them the option of purchasing their businesses. It only makes sense to allow the people who have been loyal lessee dealers of Getty Oil Company the opportunity to continue to do business in the market place.

Although I am not privy to Texaco's business plan, I would guess that they are looking to have their cake and eat it too. This will be at the expense of the Getty service station dealers and their customers. In my opinion, Texaco has not offered a fair plan to divest Getty's northeast retail holdings. Their PowerTest agreement is evidence that they are unwilling to put forth a fair merger proposal.

The service station dealers who are affected by the Texaco/Getty merger must be given the opportunity to buy their businesses. Anything less than the dealers first option to purchase is criminal.

I am here today because the dealers of Massachusetts have a serious problem. How can I explain to Getty dealers who have been in business for over 30 years that they are victims of merger mania, and that there is nothing we can do about it? It is unconscionable to expect a man to assume the risk and hard work of running his own small business and then be kicked out after years of service because the company wants to increase their control of the retail market.

We have often contended that the small service station dealer is only a pawn in the big oil company power game. The correctness of this statement is more evident now than ever before.

The people who have the power to decide on the fairness of the Texaco/Getty merger must take into account the service station dealer. Restrictions on oil company mergers are necessary to study the impact of mergers on the entire economy. The first option to purchase the service station location must be awarded to the service station dealer. It makes more sense to have businesses run by 243 independent small businessmen, rather than have one company, PowerTest, who sold their allegiance to Texaco, assume control over all Getty locations in Massachusetts.

Small business is the back-bone of competition in our economy. We have a responsibility to promote fair competition and to protect the best interest of the public and small business sector of our economy. The best way to assure that these responsibilities are met is by making sure that the present service station operators are given the right to purchase their businesses if they so desire.

Mr. OLIN. Mr. Conte, do you have any questions?

Mr. CONTE. Thank you, Mr. Chairman.

Thank you again, Jim, for coming down and joining the panel.

I was astounded to see the Eagle Point refinery up for sale now in New Jersey as a result of the merger mania. What impact will it have on supplies in New England?

Mr. AYOTTE. It really depends on who it is sold to at the present time. We do receive products from that refinery. If someone else buys it and diverts product from there somewhere else, we could definitely have a shortfall of product.

Mr. CONTE. How has the number of retail gas stations changed in Massachusetts, both in absolute terms and the ratio of the company owned to independent owned?

Mr. AYOTTE. Right now, we are down to about 3,000 total service station in Massachusetts. In 1972, we had 4,500, so we lost well over 25 percent of our service station dealers already.

What we are seeing now is a trend where the oil companies are taking over the plum locations. They are making it uneconomical for the dealers to stay in business. They are converting these stations to massive pumpers, and the company operates them with employees. We are seeing a lot of that, and a lot of dealers have been displaced. If this trend continues, we can expect to see a lot of other dealers go out of business also.

Mr. CONTE. Do you have any idea what you dealers contribute to the tax base in Massachusetts?

Mr. AYOTTE. I don't know offhand exactly how much we contribute to that. The way I look at this situation, however, is PowerTest a company out in New York, their stations are run—they are company-operated stations. Any profits made by PowerTest will be diverted out of State. If we have 243 independent businessmen in Massachusetts, we are sure that most of their profits will remain in the economy in Massachusetts.

Mr. CONTE. Mr. Rasheed, you have become a familiar face to this committee. We appreciate the time you have devoted to an issue which is of great concern to us and to you.

Your letter to the Federal Trade Commission was dated March 27, nearly 3 weeks after the Texaco-Getty consent decree was published in the Federal Register. Have you got a response to that yet?

Mr. RASHEED. I had a telephone call yesterday from a lawyer at the Federal Trade Commission, and he wanted me to tell him something about what is the Petroleum Marketing Practices Act. [Laughter.]

I think his line of questioning was to determine how it would impact on mergers. Obviously, they hadn't thought about it up to this point.

Mr. **Conte**. Do you think that is about the end of the response you are going to get? What kind of a response do you think you are going to get?

Mr. **Rasheed**. I really don't know how far he will pursue it and whether he is seriously interested at this point. It seems a little late to be showing this type of concern, and it obviously was raised by my letter. It was not something they had thought about, and I think this is what we are all complaining about.

Mr. **Conte**. What steps must they take, do you think, to modify the consent decree along the lines that you suggested?

Mr. **Rasheed**. I think it can be done. I think, No. 1, the prime concern should be to assure the dealers that their rights under PMPA are protected. That may require some amendment or some legislation which may be discussed in further testimony today.

At the same time, I think that they should absolutely insist that the dealers involved—as we say, there are 600 dealers in the Northeast who were Getty dealers and will now be turned over to PowerTest. These dealers have an investment in those stations. Some of those stations, the dealers would probably be able to sell if they had the opportunity to sell it. Their goodwill value alone would probably be over $150,000. These dealers have a lifetime invested in those businesses.

We say that if they are going to be turned over to a small marketer and, in effect, lose the value of their business, at least the company that is doing it—in this case Texaco—should give them the opportunity to purchase those locations, and probably they would continue to purchase gasoline from Texaco or whomever Texaco wants to supply, in this case PowerTest. But at least the dealer would remain an independent businessman, and he certainly would contribute to competition.

Mr. **Olin**. Would the gentleman yield for a moment?

Mr. **Conte**. Yes.

Mr. **Olin**. I wanted to follow this up. There has been some reference to the offer to sell, but with a 20-year, no-gas clause by both Getty and, I guess, Texaco also.

What happens in that case? Suppose somebody took that up. That means you are out of the filling station business, I take it.

Mr. **Rasheed**. Right. The very best that you could hope to have perhaps would be a garage.

Mr. **Olin**. What value do you get out of your investment then? How much of a loss does an independent take in that event?

Mr. **Rasheed**. Again, we come back to what is the value of an ongoing business. Some of the service stations in this Washington area—I can give you any number of stations that have been sold—their goodwill value alone is well over $300,000. Without a service station business, an ongoing service station business, it would have a very limited goodwill value.

It is really a question of devaluing a whole operation, of not being able to perform the service that you would normally expect a service station to perform.

Mr. **Olin**. Your request really is that the independent be allowed to buy his facility without restriction.

Mr. **Rasheed**. Right.

Mr. **Olin**. Yes. And he continues in business in any way he sees fit.

Mr. **Rasheed**. He should be able to buy it at a fair market value. It should be appraised, and he should be allowed to buy it.

Mr. **Olin**. I thank the gentleman for yielding.

Mr. **Conte**. I am through, Mr. Chairman.

Mr. **Olin**. Mr. Bilirakis.

Mr. **Bilirakis**. Thank you, Mr. Chairman.

First, sir, I have a brief statement that I failed to ask be made a part of the record, and I would make that request at this time.

[Congressman Bilirakis' opening statement follows:]

OPENING STATEMENT OF HON. MICHAEL BILIRAKIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

I am pleased this hearing has been convened to examine the effects of oil industry mergers and the Federal Trade Commission's consent decrees on both small businesses and consumers. Philosophically, I don't believe big is necessarily bad, and the perfect example is AT&T which provided this Nation with the finest communications system available in the world. However, I do have some major concerns over the effects of mergers and subsequent divestitures on those small businessmen who have been running a full service station for 20 years, and suddenly find that the goodwill which has been developed under a particular brand name might be for naught through no fault of his own and, with no part to play in the decision making which affects the continuation of his business.

Since 1974, 6,000 full service stations have closed in Florida, with only 4,300 now left in a State which is so dependent on tourism, which means automobiles. I understand even more stations will be closing because of the withdrawal of a company from Florida. I met with some Florida station owners whose futures are unknown. They fear losing th brand name under which they have been operating, and fear being turned into a gas-convenience station. As they stressed, their expertise lies in automobile maintenance and repair, not in selling groceries. They make a good point.

Mr. **Bilirakis**. I suppose the station that you were just referring to is one that apparently had been closed for some time and, in an effort made by a going concern to buy that location, it was determined that there would be a 20-year no-gas type of a lease—not a lease, but a 20-year no-gas type of a covenant, a restrictive covenant, right?

Mr. **Daziel**. Yes.

Mr. **Bilirakis**. It was a closed station?

Mr. **Daziel**. That is true. It has been closed for about a year and a half.

Mr. **Bilirakis**. Is that the result of a merger?

Mr. **Daziel**. It certainly is very difficult. When Skelly was operating in the Midwest, Skelly had had those two stations for over 15 years. When they merged with Getty, a lot of things happened.

Mr. **Bilirakis**. When did that merger take place for Skelly-Getty approximately?

Mr. **Daziel**. When did it?

Mr. **Bilirakis**. Yes.

Mr. **Daziel**. Five years ago.

Mr. **Bilirakis.** Five years ago?

Mr. **Daziel.** Approximately. I don't have the exact date.

But one of the first things that happened after the merger took place was not only the credit card program discontinued, but also the brand name of Skelly ceased to be used. They did not use the Getty name either. They inserted a brand called Serfco, which is a secondary brand.

Mr. **Bilirakis.** That is the owner of that particular station?

Mr. **Daziel.** No. I am talking about the Getty Co.

Mr. **Bilirakis.** OK.

Mr. **Daziel.** The Getty Co. chose not to use their Getty brand as they market it in the rest of the country. They formed a new brand called Serfco.

Now, the dealers were extremely concerned because this meant, in fact, that by Getty's admission—or at least their statement—the dealers no longer had Petroleum Marketing Practices Act coverage anymore because they were a major branded dealer, they were now a secondary branded dealer called Serfco. Some of the dealers were very confused and did not use all of the legal remedies at their disposal, because of the merger, some felt they were no longer valid.

Mr. **Bilirakis.** OK.

But those dealers still had a supply available to them; is that correct?

Mr. **Daziel.** Yes, they did.

Mr. **Bilirakis.** They had a supply available to them, but they did not have available the Getty name?

Mr. **Daziel.** That is true.

Mr. **Bilirakis.** They had to use the new name?

Mr. **Daziel.** That is true.

Mr. **Bilirakis.** All right.

Mr. **Daziel.** They also did not have the credit card program available to them, which was a very valuable marketing tool.

Mr. **Bilirakis.** Do you mean the Getty credit card?

Mr. **Daziel.** Yes. They had neither the Skelly nor the Getty. They had no credit card program, period.

Mr. **Bilirakis.** But the other credit cards, like VISA, et cetera, were available to them?

Mr. **Daziel.** Yes.

Mr. **Bilirakis.** Do you think that those stations then closed as a result of a merger, or do you think they closed as a result of maybe poor management?

Mr. **Daziel.** No. Poor management had really nothing to do with their closings at all.

What did happen is they restructured the rent policies, and they restructured the maintenance policies. But the main thing that happened, the No. 1 thing that happened, was Skelly had no company operations in its entire system, and when Getty took over and went to the Serfco program and changed the economic conditions of the stations by raising rents and other techniques, they acquired a couple of stations and company operated them. They immediately lowered the price to less than what they were charging their dealers, and just drew away the business of their own dealers, and the dealers just flat-out went broke. It was not because of mismanagement, but because they could not compete against their own brand.

Mr. **Bilirakis**. Were the leases that these dealers had with Getty expired, or had they expired approximately during this same period of time, or did they continue on? What are they usually, 3-year leases? I suppose that varies.

Mr. **Daziel**. Yes, it varies tremendously with the different locations. The leases expired at various times.

Mr. **Bilirakis**. Would the rent have gone up and some of these other things taking place during the terms of the lease or after the lease expired and in the process of renewing the lease?

Mr. **Daziel**. They went up in accordance with the terms of the lease. Most of the leases, when they were renegotiated—that is a bad term, because there really are no negotiations—but when the lease was renewed, they would just have different numbers inserted.

Mr. **Bilirakis**. That was after you had the expiration of that particular lease.

Mr. **Daziel**. Yes, it was after the expiration. Right.

Getty did, in fact, honor Skelly's leases. We are not contending that.

Mr. **Bilirakis**. So there was no problem with that.

Mr. **Dalziel**. No.

Mr. **Bilirakis**. I asked the gentlemen previously, the truckstop operators, about mergers. My impression was that they did not feel that mergers themselves were bad, but they felt that the FTC order—and this is a particular-instance case—the FTC order requiring the divestiture was bad, and that it did not contain maybe the proper conditions and that sort of thing.

Is that basically the problem that we have?

Mr. **Dalziel**. I don't view that as being the major problem. I view the major problem, in the long run, as being that there are fewer and fewer suppliers available. The gentlemen from the Truck Stop Association feel that they don't have people clamoring at their doors offering them product. I think that is going to be even a more serious problem in the future because the major refiners have now found that they can direct market product and that they do not need to deal with independent businessmen.

Mr. **Bilirakis**. But if the merger consent decrees contain conditions mandating certain areas, mandating a continuing supply and whatnot, would that take care of the immediate problem that you are concerned with?

Mr. **Dalziel**. No.

Mr. **Bilirakis**. Why not?

Mr. **Dalziel**. It might be with the immediate. The point being that, every time—I own my own land and building also, and I do have the freedom to go out and pick up a new supplier if I needed to. Sun Oil Co. is on the No. 1 list of companies to be merged with, because they also have a lot of oil reserves.

But where 15 years ago I would have had about 20 majors to choose from as a supplier, I now have only 4 or 5. That is not very good competition. Every time there is a merger, there is one less company to deal with.

Mr. **Bilirakis**. So the bottom line of what you are saying is that you are against mergers.

Mr. **Dalziel**. I think that they are very detrimental to the Nation as a whole, yes.

Mr. **Rasheed**. I wonder if I might add a little to do that, Mr. Bilirakis?

Mr. **Bilirakis**. It is up to the chairman. He controls the time.

Mr. **Olin**. Go ahead and proceed, Mr. Rasheed.

Mr. **Rasheed**. I simply want to illustrate what Mr. Dalziel is saying.

I think that mergers as such in most businesses perhaps could be accomplished. I don't think anyone here is afraid of big business as such. I don't see that it is necessarily bad. I think what we are afraid of is what our bottom line is, the diminishing of competition that results in this case.

I would like to tell you a quick story of my visit to Australia last year. This is a country that originally had nine refiners. As I heard yesterday in testimony, it is now down to five major refiners. While we were there last July, they had a major rail strike, and there was a tremendous amount of road traffic, vehicular traffic, in Sydney. In fact, the Sydney Bridge was jammed up for about 2 hours to drive across.

The oil companies quickly got into the act the next day—and these are the same oil companies we see here—the very next day, they simultaneously, in obvious collusion, raised the price of gas 25 cents a gallon.

That is good business. The fact is they had the power, and the lack of competition was such that they were able to do this. They simply said, "Hey, let's take this opportunity and raise the price of gas, because everyone is suddenly driving." So they did.

That is what happens, I think.

Mr. **Bilirakis**. Isn't that what happened in this country when we had the great big, probably supposed oil shortage a few years ago and the price of gas went sky high, and now, all of a sudden, it has dropped down to just a little better than a dollar a gallon as a result of the fact that the American people decided they were sick and tired of paying those prices and, of course, they were also energy conscious?

I am basically playing the devil's advocate here more than anything else. I am very happy that I was not a part of the Congress that possibly could have done something about the AT&T breakup. That certainly was a perfect illustration of bigness not necessarily being badness, and now we are all going to suffer for quite a few years, all we consumers, as a result of it. I am very happy to hear you say the statement that big is not necessarily bad.

But I ask the question, don't you think that the American marketplace, with proper safeguards—I am concerned. In my opening statement, I had made the statement there are 6,000 independents who have gone out of business since 1974, and we are down to a little better than 4,000, I think, in a State which gets an awful lot of automobile traffic, obviously, with all of the tourism. So I am concerned about that. Many of my friends have independent stations and whatnot, and I have heard from them, too.

But doesn't the American marketplace, so to speak, the supply and demand, take care of an awful lot of these problems?

Mr. Rasheed. I don't think it does today. In a normal market, I think supply and demand is the key to a flourishing competitive marketplace. I think that, in a normal market, there is no substitute for that. I think it has to be that way.

But we don't have a normal market in this business. Oil companies simply have so much power over their retailers—for example, they own the locations, they set the rent, they set their price which the dealers have to pay to buy gas, and they can charge them credit card fees where once they never did. They can set a company store up across the street and undersell them by 10 cents a gallon. By that I mean they retail for 10 cents a gallon less than they sell at wholesale to their franchised retailers.

Under those conditions, you can't say that is a normal market. So, the rest of it doesn't apply. Supply and demand cannot control that market. I think that is what we are afraid of. If they are allowed to restrict that competition even more, I can only see disaster, not just for our industry, but I think the consumer is going to—we are captive customers as it is—and I think the consumer is going to also become a captive customer of the refiners unless they are restricted.

Mr. Bilirakis. I have to admit just in closing, Mr. Chairman, that I am greatly concerned about the independents who have entered into a deal—a family basically. It might have been a father or a grandfather many, many years ago—with an oil company to create the corner gasoline station—"Gasoline Alley," if you will, in the comic strips—and had built up all this goodwill and all the investment, and then, all of a sudden, as a result of lack of proper restrictions maybe in consent decrees, they, for all practical purposes, go out of business, whether it be the result of lack of supply—ordinarily it is the fact that the new lease has to be renegotiated, which is very limiting, which increases the rents, and that sort of thing.

I would go along with you there, sir, but I am also very much concerned with the fact that the American marketplace and free enterprise has to be allowed to work. Without these oil companies, you would not have your businesses, and there wouldn't be any need for many of us.

Mr. Rasheed. We think there is room for both of us.

Mr. Bilirakis. Yes. I would agree.

Mr. Rasheed. I would also like to say that our industry is, without question, the most competitive industry in the world. There isn't a dealer that operates in this business who doesn't realize that, unless he is a competitive businessman, there is no place for him in this business. So we accept competition as a part of our daily lives, and we don't shirk that.

Mr. Bilirakis. Thank you, gentlemen.

Thank you, Mr. Chairman. I am sorry I took so much time.

Mr. Olin. I will call on Mr. Dalziel in just a moment, but I wanted to ask Mr. Rasheed a couple more questions.

I guess the basic point being made here is that you want to have enough producers so that there is a pretty good chance there is free competition available to you in terms of your supplier, and you are just suggesting that, when it gets down to a half a dozen or so, that maybe a little on the dangerous side, that there could be either direct collusion or general, mutual agreement that could result in a noncompetitive situation.

You are also concerned about the competition between the producer's outlet and the independent dealer, to be sure that the pricing basically is fair, that your competitor on the other corner owned and operated by the oil company doesn't have a better deal than you have.

Are you complaining that competitive situation is unfair as it is working out?

Mr. **Rasheed.** First of all, in response to the first part of your question, as we get less refiners supplying the marketplace—as we heard earlier, when Skelly (Getty) withdrew, no one stepped in to fill the vacuum with offers of supply.

I think that what it comes down to is the fact that, when there are limited suppliers, you deal with those limited suppliers on their terms.

Mr. **Olin.** Everybody knows that as it approaches one, it just gets worse.

Mr. **Rasheed.** There is no bargaining, and there is no competition. So that would be our feeling on that.

Mr. **Olin.** I am not questioning that. I wanted to just explore a little bit what the degree of pricing discrimination might be in the picture?

Mr. **Rasheed.** It is getting to be very serious. We have documented cases, I think. We did an extensive study of company operations in Atlanta, GA, recently, and I think we have had a pattern of company operations underselling their dealers, that is the wholesale price at which they supply their franchise dealers, by 5 or 6 cents a gallon. On top of that, the dealer pays a rental of perhaps 4 or 5 cents a gallon, pays 3 percent or 3 cents or 3½ cents a gallon for the use of the company credit card.

Mr. **Olin.** Does the Petroleum Marketing Practices Act protect you in that respect?

Mr. **Rasheed.** No, sir; it does not. But there are some amendments which have been introduced in Mr. Sharp's subcommittee and these would address that.

Mr. **Olin.** If, in fact, you had no pricing discrimination and you were really free to compete, then, of course, nobody can guarantee how many dealers there ought to be, the market would determine that.

Mr. **Rasheed.** That would be true.

Mr. **Olin.** You are complaining that there are less dealers. I couldn't say whether that is good or bad. It depends on what the market is supporting. If you had too many, of course, nobody is going to make any money.

Mr. **Rasheed.** I think the marketplace has already done that to——

Mr. **Olin.** The marketplace basically takes care of that itself in our system. The number of dealers will always be fluctuating, depending upon——

Mr. **Rasheed.** That is true.

Mr. **Olin** [continuing]. The availability of business.

Mr. **Rasheed.** Right. Since 1972, there were probably 90,000 service stations that have been closed up. But I must add that the practices of the refiners have sort of hastened the demise of many of these service stations. They want to retain a few large stations rather than many small stations.

Mr. **Olin**. You are saying that the producers are really driving the thing to less dealers.

Mr. **Rasheed**. Yes; that is their intent.

Mr. **Olin**. And ultimately, that is going to be bad for the consumer.

Mr. **Rasheed**. Yes.

Mr. **Olin**. Although, being a consumer, I don't know any more about it than anybody else, but I don't have any difficulty finding a station that will sell me gas. I don't know whether I am paying too much or not. I can't tell.

Mr. **Youssef**. Maybe I could just add something on this.

Mr. **Olin**. Yes, sir.

Mr. **Youssef**. Regardless of what market forces have driven these dealers out, we see at the same time that the dealers are going out. We see an increase in company operations with the oil companies.

Let's take Texaco since it is part of this discussion at this time. Texaco in Missouri has been selling—company-operated stations have been selling gasoline at 99 cents, where the cost to the dealer was $1.06. We see a lot of volume going toward the company operation, and maybe the increase in quanity of units are not that great, but the increase in volume is tremendous. I think it can support some of the figures that have been coming through over the years. There has been a tremendous share increase of the market by direct operations by the oil companies and, at the same time, a reduction of the number of dealers.

Mr. **Olin**. Mr. Dalziel wanted the floor here shortly, but do you want to finish that point?

Mr. **Rasheed**. Just let me give you this statistic to which he refers.

Mr. **Olin**. Go ahead and proceed, Mr. Rasheed.

Mr. **Rasheed**. Between 1972 and 1981, there was a decrease of 59 percent in the number of refiner-supplied retail service stations, and their market share increased by 36 percent. In that same period, there was an increase in refiner-operated service stations of 14 percent, but their market share increased 86 percent.

So I think that is what he is trying to say.

Mr. **Olin**. That trend that you are complaining about, if that goes to the limit, there won't be any independents.

Mr. **Youssef**. Congressman, we are seeing that not just on the part of Texaco, but on the part of Shell and on the part of the rest of the major oil companies, as far as company-operated stations.

Mr. **Olin**. Mr. Dalziel, I think we are going to need to terminate this panel and move on. Go ahead.

Mr. **Dalziel**. When you get down to the bottom line, it really is the FTC should look to why the mergers are being asked for in the first place. I think that, in most every case, you will find that there is only one reason the oil companies want to merge, and that is to acquire the crude oil reserves. The company that controls the crude oil controls, period. We don't have to worry about credit cards, rents, who sells the retail product, because the person who controls the crude oil has total control. I think the embargo proved that.

Mr. OLIN. Thank you.

The true chairman would like to take over. He has another question.

Mr. BEDELL [presiding]. I guess this may have been answered already, but one of the questions I have is whether or not there are stations that are owned by Getty, and what will happen to those operators under this situation? First of all, are there company-owned stations that are leased at this time?

Mr. RASHEED. Yes, there are company operations.

Company-owned, you mean, right?

Mr. BEDELL. Do they own the stations that they lease to operators?

Mr. RASHEED. Yes. Jim, perhaps you would like to answer that.

Mr. AYOTTE. Sir, I am from Massachusetts. We have 243 Getty stations there and, say, 75 percent of them are owned by the Getty Oil Co. and leased to dealers.

Mr. BEDELL. What is going to happen to them?

Mr. AYOTTE. Presently, Texaco has negotiated a deal with PowerTest Corp., a jobber out in New York, to turn these locations over to them. PowerTest is a closely-held company, and they generally run the stations themselves.

So my concern would be that—the Getty dealers in Massachusetts at least—would be forced out of business and would have a company-operated jobber taking over these locations.

Mr. BEDELL. That is really my question. What is going to happen to those people who have been operating leased stations?

Mr. AYOTTE. It appears now, we have no response from Texaco or Getty, it seems like they are really not interested. It appears these people are going to be out of business, in short. They are going to be thrown out and PowerTest is going to come in. In fact, Texaco has arranged to finance the whole deal. So, in essence, Texaco is really just gaining their market share because, if they are arranging the deal, then PowerTest belongs to them.

Mr. RASHEED. Mr. Bedell, there are 606, I think, Getty operations in the Northeast which will be sold and, of these, I think all but 30 will be sold to PowerTest. Now the 30 that won't be sold to PowerTest will be retained by Texaco as company operations.

But what concerns us is that we are not sure what is going to happen. We have got conflicting answers. We understand that Texaco is going to sell the Getty trademark to PowerTest, which means that the dealers who would now be Getty dealers under PowerTest would no longer be under the franchise of a major refiner and integrated refiner and, as such, would not have any Petroleum Marketing Practices Act protection. We are very concerned about that.

Mr. BEDELL. I don't want to take too long, but would those stations in Massachusetts have protection under the law to keep Texaco from selling them to some other major jobber who would then operate those stations themselves rather than have the independent lease holders continue to operate them?

Mr. RASHEED. No, they would not have protection.

What we are concerned about also is that PowerTest is a company, a relatively small company, which does not really have the assets to make this kind of purchase, but they are being loaned the money by Texaco to do it. Then, they, in turn, may turn around and start to sell off the real estate properties and simply recoup a good deal of their investment that way. So there is no protection against that either.

Mr. **Bedell**. Thank you for being here.

Mr. **Bedell**. I guess it has been agreed that we will combine the next two panels.

I now call John Hahn of the Missouri Oil Jobbers Association; Gregg Potvin, Illinois Petroleum Marketers; Mike Scanlon, National Oil Jobbers Council; Jack Blum, Independent Gasoline Marketers Council; and Tim Columbus, Society of Independent Gasoline Marketers of America. If the five of you would now come forward, we would appreciate it greatly.

I think we'll start with you, unless there is any objection, Mr. Hahn. Any summarization that you can do would be helpful to the committee.

TESTIMONY OF JOHN J. HAHN, EXECUTIVE DIRECTOR, MISSOURI OIL JOBBERS ASSOCIATION

Mr. **Hahn**. I am executive director of the Missouri Oil Jobbers Association. There are approximately 600 jobbers—what we would call jobbers—in Missouri, out of 1,200 licensees, and about 400 of them are members of our association.

An oil jobber, in Missouri at least, is an independent businessman who owns or owns control of an average of 12 service station outlets, which may be operated either by dealers or may be operated directly by salary.

Major oil companies own relatively few stations in Missouri. Those they do own are primarily in the large metropolitan areas. We are concerned with, but not necessarily opposed to, all these oil company mergers. The mere fact of a merger, even between giants, would not be necessarily an immediate threat to our existence.

But I want to use my limited time to speak of a particular merger, Texaco-Getty, and its effect in Missouri, and more particularly to the much more damaging effect of the Federal Trade Commission order. That effect will hurt us more than the merger.

In the more detailed information which I forwarded to the committee, I included the names and addresses of the 76 jobbers in Missouri who have contracts with Getty. Many of these are smaller companies who are in the midst of their most difficult financial time in more than 20 years. Many are disappearing. More than 40 percent of all our stations in Missouri have been closed since January 1980, after our peak taxable gasoline sales in 1978 at a little over 3 billion gallons. We lost after that almost a quarter of a billion gallons.

It is kind of interesting that right now, at a time when this FTC order is disrupting the normal course of competition, that this first quarter of this year, in the month of March, we have had the largest gain in the sale of gasoline since 1973. I don't know whether they are psychic or whether they know, but this is coming along just at the time that these people have suffered through these 5 years of depression, and they will apparently be torn loose from their supplier by FTC just at the time a little upswing may be on the way.

FTC's order, as you know, was for the merged company to divest the Getty apparatus in 15 States. The blanket order is totally unjustified. If you would be surprised that I say that, no one from FTC has contacted any of my members, nor have they asked the State government for any information on who is selling, what gallons and what effect it might have.

I brought with me the tracing of all the gallons since 1970 that were sold in Missouri. I have them for the counsel's use. You might want to loan them to the FTC, because we know they didn't get any such information. You can trace the decline, company by company, who disappeared, who lost the gallons, who gained the gallons and what effect the previous mergers have had.

I think they did in Missouri with this order what they did because it is habit. They have been divesting in Missouri and the Midwest. The first thing they do is divest in the Midwest. It goes back to 1912 when the courts broke up the Rockefeller empire and only left Mobil and Standard of Indiana to market Missouri. In every divestiture since of any consequence, the first thing they do, just by reflex action, is divest the Midwest, divest the Midwest. And when they are not divesting, the companies themselves are pulling out.

If we had done on our own, if we had gotten together, Gregg Potvin and I, we had said that we are going to pull out and we are going to leave this here for you, they would have us in jail. The individual company couldn't take the actions of husbanding the resources and husbanding the business to so few companies without being in violation of the law.

You must remember that Texaco had long since withdrawn from most of Missouri, all of Kansas, and these other States, and there was no competition at all with the Getty outlets. Five years ago in Missouri, we had Texaco, Getty, and all the rest, and then Texaco withdrew from most of Missouri and all of Kansas, in almost the same area that is involved in this order or consent decree. So then we were left with Getty and the rest.

Now the Government rushes in and says we will permit this merger, but you have to get rid of the Getty outlets. So now we have neither Texaco nor Getty to supply us. It is likely Texaco would have withdrawn Getty gradually from the area anyway, because they had withdrawn themselves from the area. The consent decree should really order Texaco to honor the Getty contracts instead of giving them an excuse, or even an order, to cancel them.

But we have not opposed the merger. In the first place, there wasn't any point blowing in the wind. The merger was set in concrete, it was announced to us, and that was the way it was going to be. There weren't any moratoriums. So we tried to do our best to get some modification of that order.

We wrote the FTC on February 21 essentially the things we are telling you, and they never responded. It is like what one of our officers has said, that Texaco's fingerprints are all over the divestiture order. He thinks that it is so similar to what Texaco themselves did that they are not a bit unhappy about it. It is like the rabbit saying to the fox, "Whatever you do, please don't throw me in that briar patch." If your committee could do nothing else, you could at least urge FTC to modify this decree for the Getty outlets to be sold where there wasn't any competition.

We can pick up the phone out here and we can call a broker for the time being, and we can buy some gasoline today, but with the upswing in consumption, that might not be true very long. The glut is certainly not a permanent condition. As our consumption moves up, the sources will become more cautious about who they sell to and how they sell. But the jobber, at least, would have a longer period of time to negotiate a new contract. He deserves a stronger supplier because the stations which he has built with loans—sometimes from Getty, sometimes from the bank, sometimes from others—are predicated on upswings and downswings in the economy. This has been more severe than any in 20 years.

Some Congressmen have told us that the person who buys this business from Texaco would be able to give us the same service. The name that pops up most frequently is Koch Industries. Some other supplier will not be able to give us the same service. In the truck stops, for example—Koch is a Kansas refiner. They have some supply. They are a good company. It is just that when you are dependent upon the advertising, the promotion, the credit cards, the company representative to counsel you over the rough spots, now to add convenience stores, and so forth, they wouldn't have any staff like that at all. They just sell gasoline. They don't really sell service.

With the truck stops, the Getty name is recognized everywhere as one of the better suppliers. In Missouri, one big competitor to Getty in the truck stop business is Union 76. They operate in Missouri only with truck stops. They will not take on a single Getty truck stop. The reason is they already have one on the interstates somewhere close to the Getty truck stops. The two best are going to obviously wind up with most of the better locations.

I want to quote to you just two short paragraphs from one Getty jobber. Copies of a bunch of these letters are already in the record.

This fellow wrote me and said, "Dear John: Once again I come to you for help * * * Texaco-Getty."

Then he goes on at some length, and he tells of the help that he would need. He said, "John, I had finally got a good supplier, and I cannot say the many good things that I was experiencing with Getty * * * I really hated to see it happen.

"Asking for the Moon. W. Morgan."

Billy Morgan and my Missouri jobbers are not asking for the Moon, they are asking for mercy. The merger is not viewed with any elation, but the FTC order that tells Texaco that they do not have to do what Billy calls their moral duty by honoring these contracts is something else.

That leads to my final suggestion. FTC is obviously insensitive and uninformed about the businesses that are really affected out at the grassroots. You heard testimony earlier today that one man had made a complaint to them, and he finally got a telephone call yesterday asking for some information on what the Petroleum Marketing Practices Act is all about. We think that is about par for the course.

My final suggestion is that, because of FTC's action on the divestiture order for the Midwest States, that casts grave doubts upon the wisdom of all their actions. I know that they are going to contend that they have expertise in this area, but every person in the business, including dealers and refiners, all know that this is just an outrageous order so far as enhancing competition is concerned.

We would like to see you explore the possibility of enlarging the FTC possibly with rotating seats on it so that, if a merger in the steel industry or the shipping industry or the oil industry is at stake, that we could at least count on somebody sitting on that Commission with some expertise in that business.

These mergers are gigantic. I mean, words can hardly describe how big they are. But when they are accomplished in a matter of days, it should be done with some expertise and some intelligence. That part of the order involving the divestiture is totally lacking in any knowledge.

We are going to leave with your counsel the company names, the records of the gallons of everybody in our State from 1970 forth.

I encourage your questions. That is all I really have.

Mr. BEDELL. Thank you, Mr. Hahn.

[Mr. Hahn's prepared statement follows:]

PREPARED STATEMENT OF JOHN R. HAHN, EXECUTIVE DIRECTOR, MISSOURI OIL JOBBERS ASSOCIATION

Mr. Chairman, I am John R. Hahn, executive director of the Missouri Oil Jobbers Association. There are some 600 oil jobbers in our state with about 400 of them current members of our Association. An oil jobber is an independent businessman who owns, or owns control of, an average of 12 service station outlets which may be operated either by salary or through an independent dealer, who also owns stations in some cases.

Major oil companies own relatively few stations in Missouri, primarily in large metropolitan areas. We are concerned with, but not necessarily opposed to, all oil company mergers. The mere fact of a merger, even between giants, is not necessarily an immediate threat to our existence.

However, I wish to use my limited time to speak of a particular merger, Texaco-Getty, and its effect in Missouri, and more particularly, to the much more damaging effect of the Federal Trade Commission Order will have on our jobbers if we cannot find some way to modification of the Order.

In the more detailed information which I forwarded to you, I included the names and addresses of the 76 jobbers in Missouri who have contracts with Getty. Many of these are smaller companies who are in the midst of their most difficult financial times in more than 20 years. Many are disappearing. More than 40 percent of all our stations in Missouri have been closed since January 1980, when our peak taxable sales went over 3 billion gallons. Last year it was down to 2.75 billion gallons.

FTC's Order, as you know, was for the merged Texaco-Getty company to divest Getty marketing apparatus in 15 Midwest states. This blanket order is totally unjustified, and you may be surprised that I would say that.

However, you must remember that Texaco has long since withdrawn from large areas, including most of Missouri and Kansas. They did not compete there at all with the Getty outlets. Five years ago we had Texaco, Getty and all the rest. Then Texaco withdrew and many Texaco jobbers turned to Getty. Then Texaco acquired Getty and the government rushes in to say, yes, we will permit this merger but you have to get rid of the Getty outlets. So if this actually happens we lose both companies as suppliers.

It is likely that Texaco would have withdrawn Getty gradually from the area over a period of time because they had withdrawn themselves. The government should encourage Texaco to honor the Getty contracts—not give them an excuse to cancel them.

Still, we have not opposed the merger. In the first place, there was no point blowing in the wind. The merger is set in concrete. There will be no moratorium and that is not our point.

FTC needs to change the order by modifying the requirement of divestiture.

As it now stands, it is like the Rabbit saying to the Fox, "Whatever you do please don't throw me in that briar patch". Texaco does not seem at all unhappy with the FTC order. Many Getty people are definitely unhappy about it.

Gentlemen, if your committee did nothing else, you could call upon FTC to modify the order for the Getty outlets to be sold in those places where Texaco either had previously withdrawn or did not compete.

The worst damage comes to us not from Texaco-Getty, although that presents a serious challenge in getting another comparable supplier. It comes from the FTC order.

Sure, we can pick up the phone and call a broker and buy some product today. But the glut is not a permanent condition. That situation will change. As our consumption moves up, and it is doing so, and our known supplies decline domestically, prices will move up. Product may become difficult to find.

However, the jobber would have a longer period of time to negotiate a new contract. He deserves to have the stronger supplier because he has stations which he has built with loans, sometimes from Getty, sometimes from others. Some Congressmen have said to us, well, the person or company who buys these outlets will be able to give the same service.

He will not. In truck stops, for example, the Getty name is recognized everywhere as one of the better suppliers. In Missouri one big competitor on the interstates is Union 76. They operate only truck stops in Missouri. They will not take on a single Getty operator because they already have a Truck Stop within a short distance of the Getty truck stop. They may hire extra help to handle the Getty business sent to them—by FTC.

Let me quote from just one letter of a Getty jobber. He wrote February 29, and said:

"Dear John: Once again I come to you for help . . . Texaco-Getty.

"The help I need would be . . . One, to try to influence in the direction that Texaco should do its moral duty, first, by making every contract good, and if they want out, to help find a supplier to take their place . . . Second, to try to hold marketing structure together for Getty's truck stops (Excellent Program) Third . . . or to suggest possible suppliers.

"John, I had finally got a good supplier, and I can not say the many good things that I was experiencing with Getty . . . I really hated to see it happen.

"Asking for the moon. —W. Morgan"

Billy Morgan and my Missouri jobbers are not asking for the moon. They are asking for mercy. The merger is not viewed with elation—but the FTC order that tells Texaco they do not have to do what Billy calls their moral duty is something else.

That leads to my final suggestion.

FTC's action on the divestiture casts grave doubts upon the wisdom of all their actions. Therefore, we would like to see you explore the possibility of having one of possibly two rotating seats on the Federal Trade Commission.

When a major oil company merger is involved, then that seat should be filled by someone with expertise in the oil industry who is not involved in the merger. Somehow, we must bring intelligence to the Federal Trade Commission's actions. If it is a steel industry merger, then someone from the steel industry, or with expertise in that industry, should sit on the Commission.

These mergers are gigantic, and when they are accomplished, it should be done with expertise and intelligence.

You have been generous, and hopefully wise, in asking people from our industry to share our hearts and minds with you. We thank you for doing so because it means that at least you will be able to proceed with greater knowledge of your constituency.

Mr. Bedell. If the group could shorten their testimony as much as possible and still get your message across, we are most anxious to have an opportunity to talk with the gentleman from the Federal Trade Commission. We have already put him off a half-hour here. We want to hear your message, but anything you can do to abbreviate it would sure be helpful.

Mr. Potvin.

TESTIMONY OF GREGG POTVIN, ILLINOIS PETROLEUM MARKETERS

Mr. POTVIN. Mr. Chairman, I would deeply regret lessening the committee's scalpel time for the Commission.

I would like to thank the committee for this opportunity and to commend you. A number of hearings have been held on mergers and this is, of course, the first to deal from the small business perspective, very much in keeping with the great traditions of this committee.

Several members of the panel have asked whether one objects to the merger. Of course, one objects to the merger, but it is almost irrelevant. In the language of Commissioner Pertschuk:

> In any event, the Commission is now foreclosed from attempting to enjoin the acquiring of Getty stock. It is all over. All that remains to be played out is what I would fear is the dreary little charade of the submission of comments and the purported studying of them.

As Commissioner Pertschuk also notes:

> Realism suggests the comments are not likely to alter the outcome.

Mergers hold many dangers to small business. It diminishes the number of suppliers. I would remind you, Mr. Chairman, as you know from previous testimony, when Arco committed what essentially was genocide on its jobber corps, most of them were unable to find new suppliers, although searching very diligently indeed.

Again, the day inevitably comes when a town of, say, 50,000 has a jobber of both the acquiring and the acquired firm, only one can survive.

This interplay between PMPA and mergers is deeply disturbing. There is no question that 1 second after the many dealers that will be supplied by PowerTest find that, although they are still flying the Getty flag, it now belongs to an entity other than a refiner, that they are literally stripped of PMPA protection.

I have submitted a proposed PMPA amendment to deal with that to the staff of your subcommittee. It is my hope that it will enjoy the benefit of your study and, hopefully, even your sponsorship, sir.

This same thing, incidentally, could quite conceivably happen in the Midwest. The Texas Oil Marketers Association just last week passed a resolution supporting the type of amendment that was submitted for study to your staff. So it has friends in many parts of the country.

The FTC is rapidly getting to be an embarrassment to this administration and to many observers of its activities. I don't say that lightly. This entire Midwest provision for divestiture—and I must say that the Midwest has been badly discriminated against. A certain amount of care resulted in a rather complex intricate regulatory scheme on the west coast, and the east coast arrangement at least purports to guarantee supply. There is no guarantee of supply in the Midwest.

It purported to arise entirely from one thing, the ownership of the Chase pipeline. Since Texaco acquired 50 percent of that when it acquired Getty, and also already owned 40 percent of another pipeline, Wyco, the FTC concluded that the concentration index, the so-called Herfindahl-Hirschmann Index, would be too high. From this flowed the entire incredible botched-up mess.

Consider, if you will, of the 15 States that they are requiring Texaco to divest Getty marketing properties. What does Getty have in Indiana? According to the most current NPN fact book, they have zero. In not less than three other States, Iowa, Kansas and Minnesota, Texaco has zero.

I think you might also with equal appropriateness ask yourself how much comfort the public interest derives from the fact that, in the State of Michigan, Texaco may not add Getty's six stations to the two it already owns. Further, in Wyoming, there are only two Getty stations.

Two of the States, while perhaps not quite as absurd as those examples, are at least equally irrelevant. I am sure that you would share my rather rudimentary knowledge of American geography to the extent that both Oklahoma and Texas, which are included, lie to the south of El Dorado, KS. The product in that part of the country flows, in the main, from the gulf northward up into the upper Midwest. It is absolutely absurd.

At any rate, in Texas, there are 2,119 Texaco stations, and grand total of 5—I am not sure that there are still 5 Getty stations in Texas. I was down there last week and searched diligently from many sources, and I could only find one called Pro-Am No. 3 in Amarillo. But whether it be five or one, I think you see the point.

Furthermore, traditionally the FTC, and our antitrust authorities generally, have looked at section 7 cases, that provision of Clayton governing mergers, in terms of interbrand competition. As you know so well, Mr. Chairman, we live in an age when the maximum growth taking place in the marketplace is by direct refinery, salary-operated stations, creating dual distribution markets where the small businessman has the same entity as both his supplier and his competitor. Mergers have a profound impact on dual distribution situations, and it seems abundantly clear that the FTC must be urged to look at merger impact upon intrabrand competition as well as interbrand.

An example of that: of the 30 stations that Texaco may retain out of a list of 61 in the Northeast, most are large pumpers which, if properly managed could quite probably run the entire Getty volume in the Northeast through just those stations which, hand in hand with the rather bad joke that is the reported PowerTest transfer, says a lot about the future of the market in that part of the world.

Another problem is that the Commission views a given refiner's volume as sort of a homogeneous piece of data. Nothing could be further from the truth. Consider, if you will, gentlemen, in the case of Getty, they have no commission agent stations. They have 353 salary-operated—that is to say direct salary-operated stations, and 4,141 that are operated by lessee dealers, of which approximately 50 percent are supplied by Getty and 50 percent by jobbers.

Now, to consider the merger without even mentioning or considering, or quite possibly being conscious of, as nearly as I can tell, the existence of about 90 percent of the entities involved, does not speak well for the analytical prowess of that portion of the Commission that handled this. It is, in a word, patently absurd.

Another thing, the logic of which wholly eludes me, is that in this part of the world since 1978, Texaco has been pulling out of a great number of States. When they pull out of a State such as, say, North Dakota or Iowa or Kansas or Minnesota, that does what? It diminishes competition. You have one less competitor in the scene.

Now the Commission, in its wisdom, has decided the way to preserve competition is to dictate another pullout. So now you don't have minus one competitor, you have minus two competitors. Isn't that a marvelously convolute piece of logic?

As I am informed, the FTC with great albeit quiet pride has pronounced and will probably state before this committee that they have dealt with this entire question in a precise nature and that they have solved all problems. Gentlemen, I say to you they don't even know what the problems are. They haven't looked at them, they haven't dealt with them, and they have been both imprecise and sloppy. It is disgraceful.

Thank you.

Mr. SKELTON. Thank you, sir.

I am not sure where we were. However, I do have a question of Mr. Hahn.

I understand, Mr. Hahn, you wish to introduce two items into the record. I have marked them A and B—one dealing with the text of certain letters, and the other being a certain list; is that correct, sir?

Mr. HAHN. That is right.

Mr. SKELTON. Without objection, they will be entered into the record.

[The material referred to by Mr. Hahn above follows:]

MISSOURI OIL JOBBERS ASSOCIATION
John R. Rahn, Executive Director

A

FOLLOWING ARE THE TEXTS OF SOME OF THE LETTERS WHICH WE HAVE RECEIVED FROM GETTY JOBBERS:

"Once again I come to you for help...Texaco-Getty.

The help I need would be...One, to try to influence in the direction that Texaco should do its moral duty first by making every contract good, and if they want out to help find a supplier to take their place...Second, to try to hold marketing structure together for Getty's truck stops(Excellent program). Third...or to suggest possible suppliers.

John, I had finally got a good supplier, and I can not say the many good things that I was experiencing with Getty...I really hated to see it happen.

Asking for the moon."

W. Morgan
Morgan Oil Company
Alexandria, Missouri

"Quite frankly, I am very worried about the Texaco-Getty merger. My company has been affiliated with Skelly-Getty for over forty years and almost 20 years under my management.

According to the media the El Dorado, Kansas refinery which belongs to Getty must be sold by Texaco. This refinery supplies the greater Kansas City area and surrounding communities. This brings a lot of questions to my mind. Who will buy it? Will they continue supplying me? What brand will I be? Will there be a delay in supply of product between the time it is sold and then back in operation?

I have a very good volume of bulk motor oil and gear lubes in 55 and 30 gal. drums, etc. to supply the farm community in my area. I have them convinced and I guess you could say the product has also, that they are getting a very good product. What happens now?

I think that it would be a very good thing for all of us Getty Jobbers if we could somehow retain the Getty logo as I understand has happened back east. Hope this is of help to you. "

George L. Rockwell
Farmers Oil Co.
Mound City, Missouri

"As Getty Jobbers and the suppliers of a Truck Stop, the B & D Oil Company would be interested in the possible participation in some kind of legal action concerning the Texaco-Getty merger.

As you so aptly put it in your bulletin of February 21, 1984, it would be extremely difficult to try to tie our Truck Stop in with some company that does not specialize in this type business. A truck stop chain is not developed over-night. We may stand to lose many, many dollars in this changeover situation. Thanks.

Will Bradley, B & D Oil Co., Inc. Lebanon, Mo.

(more)

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"As of today I have not heard from Getty or Texaco. I feel it will be a year before we do. Maybe I'm wrong but my franchise should be renewed in May so think I should wait and see what this is going to bring forth. Then I will be able to discuss this matter in a more positive manner. The Rumor in Marshall is that they will close all company owned stations which has always been a big headache pricewise for me so that was sweet music to my ears."

Gwendolyn Young
Charlie's Oil Co.
Marshall, Missouri

"We are certainly willing to participate in some type of action on the Texaco-Getty merger. Please feel free to place our name on any proceeding you feel is appropriate."

Thomas Underwood
Underwood Oil Co.
Springfield, Missouri

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B & D Oil Co.
P.O. Box 1118
Lebanon, MO 65536

B & H Petro Corp.
P.O. Box H
123 East Mary
Kirksville, MO 63501

Baring Oil Co.
Route 3
Baring, MO 63531

Carl Berry Oil Co.
901 Wordsworth Road
Kansas City, MO 64105

Uel L. Briggs
Briggs & Tillman, Inc.
Box 108
Clinton, MO 64735

D S Caldwell Oil Co.
Drawer 6
Gary Brown
Richmond, MO 65556

Carter Petro Prod., Inc.
Box 231
Liberty, MO 64068

Charlies Oil Co.
Box 177
Charles Young
Marshall, MO 65340

Chrisman Oil Co.
P.O. Box 305
Mexico, MO 65265

Cross Truck Stop, Inc.
M 105 & 157
Charleston, MO 63834

D & D Oil Co.
Box 284
Wheaton, MO 64874

Anderson Oil Co.
829 Jackson St.
Chillicothe, MO 64601

D & J Oil Co., Inc.
Hwy. 136
New Hampton, MO 64471

D & M Oil Co., Inc. Ⓑ
P.O. Box 10
Clinton, MO 64735

Davis Oil Co., Inc.
Fourth and Cherry
Box 974
Columbia, MO 65201

Oral Davis Tire Company
Davis Tire Barn #108
314 South Market Street
Bolivar, MO 65613

Dermott Oil Co.
103 West Fourth St.
Lamar, MO 64759

Dewey Oil Co.
Meadville, MO 64659

Dines Oil Co.
Appleton City, MO 64724

Eder Oil Co.
Box 143
Thayer, MO 65791

Ehlers Oil Co.
Box 176
Stover, MO 65078

Eutsler Oil Co.
Box 5
Harry Eutsler
Greenfield, MO 65661

Farmers Oil Co.
George Rockwell
Mound City, MO 64470

Feuers Oil Co.
Lester Feuers
Slater, MO 65349

First Capitol Oil Co.
1130 First Capitol
St. Charles, MO 63301

Gasper-Atkinson
Truck Plaza, Inc.
I-70 and Highway 54
Kingdom City, MO 65252

Gerald Oil Co.
Box 160
Gerald, MO 63037

Gray Oil & Gas Co., Inc.
Hwy. 71 North
Maryville, MO 64468

Greis Oil Co.
Route 1
Marvin Lee Greis
Boonville, MO 65233

Gutshall Oil Co.
Clyde Gutshall
Adrian, MO 64720

Heermann Oil Co.
213 North Elm
Emma, MO 65327

Heet Co., Inc.
Lewiston, MO 63452

Home Oil & Gas Corporation
915 Atchison
St. Joseph, MO 64503

Irvin Oil Co.
Route 4
CN J. L. Irvin
Trenton, MO 64683

Kissinger Oil Co.
Box 11
Stanberry, MO 64489

Jackson Brothers Oil Co.
1842 East Ninth
Trenton, MO 64683

Jump Oil Company
315 East Broadway
Bolivar, MO 65613

Howell Oil Co.
Route 3
Moberly, MO 65270

Ray Odom
Keck Oil Co.
Box 189
Clinton, MO 64735

Hutter Oil Co.
P.O. Box 1067
Sikeston, MO 63801

Kellett Oil Co.
Sikeston, MO 63801

Loethen Oil Co.
5607 Highway 50 West
Jefferson City, MO 65101

Mackey Oil Co.
Carl Mackey
Forest City, MO 64451

L & E Martin Oil Co.
P.O. Box 310
Joplin, MO 64801

Sta-Lo Oil Co., Inc.
9425 Huhn Blvd.
Kansas City, MO 64133

Stow Oil Co.
921 Easy St.
Palmyra, MO 63461

Stewart Enterprises, Inc.
4632 Edmundson Road
St. Louis, MO 63134

Stratton Oil Co.
Galena, MO 65656

Supreme Oil Co.
Marshfield, MO 65706

Tate Oil Co.
Box 1
Gallatin, MO 64640

Thomas Oil Co.
Highway 24
Madison, MO 65263

Thomas Oil Co.
Highway 28
Belle, MO 65013

Wentzville Oil Co.
Box 147
Wentzville, MO 63385

Widmer Oil
Salisbury, MO 65281

Wiedmaier Truck Stop
4215 S. 169 Highway
St. Joseph, MO 64501

Wood Valley Oil Co.
Route 1, Box 119
Osceola, MO 64776

Wyatt Oil Co.
Box 475
Warrensburg, MO 64093

National Petro Products, Inc.
210 South Linn
Wentzville, MO 63385

Northern Oil Co.
L. Northern H. Knipmyer
Alma, MO 64001

Ray Oil Co.
Green Ridge, MO 65332

Reed Oil Co.
Winigan, MO 63566

Rockport Oil Co.
517-23 Main
Rockport, MO 64482

Saveon Oil Co.
2569 Market
Chester Brass
Hannibal, MO 63401

Donald and Nancy Short
Liberal, MO 64762

New Haven Home Oil
Highway 100
New Haven, MO 63068

Ozark Country Petroleum Service
201 East Main
Branson, MO 65616

Ray Skelley Products
629 North Park
Dale Ray
Sedalia, MO 65301

Rees Trucking Co., Inc.
P.O. Box G
Houston, MO 65483

Schweigert Brothers, Inc.
Route 1
Ste. Genevieve, MO 63670

Silvey Oil Co.
Box 84
Versailles, MO 65084

Smith Petro Marketing Co.
Box 676
West Plains, MO 65775

Dee Yoder Oil Co.
Box 4
Harrisonville, MO 64701

Yoder Oil Co.
Highway 7
Garden City, MO 64747

Young Oil Co.
Grand Pass, MO 65331

Underwood Oil Co., Inc.
Box 955
Springfield, MO 65804

Truitt and Campbell
Eureka, MO 63025

Mr. SKELTON. I would like to ask you the bottom-line question, Mr. Hahn. What is going to happen to the jobbers you work with? What do you think is going to happen?

Mr. HAHN. I think, at best, our numbers will diminish. I think stations will have to have a minimum volume of more than 100,000 gallons to survive. If the FTC is permitted to visit this problem upon us, we will be——

Mr. SKELTON. They have done it.

Mr. HAHN. No question. Some people say, well, we can't order them to stay, and we can't dictate a certain number. But we are dealing with a consent decree, and I will guarantee you that if FTC suggests that Texaco continue to supply these stations and operate a little refinery down in Kansas, Texaco will agree to it. There isn't any question about that, not in my mind at least.

Without that——

Mr. SKELTON. Without that is the question.

Mr. HAHN. Without that, we are going to be trying to depend on brokers who will have surplus product to sell, probably refined by Texaco and Getty somewhere else. We will call them and buy the product at prices probably cheaper than a company would sell it to us in the first place.

We will not have support services. We will not have a credit system and name recognition—and to sell this apparatus to Koch Industries. Koch is a member of ours, an associate member, and we like them. But that would be like selling Woolworth to me. I could handle it if somebody would finance it, but I couldn't do it in the same manner as it should be done.

I know that FTC contends they have expertise in this. But as I mentioned, they really don't. They are kind of a joke to service station operators. It is why people lose respect for government. They say, what the heck, nothing is going to happen to help us anyway. They just resign and wait for that ax to fall.

I mentioned that we already lost 40 percent of our stations since 1980, and we dropped our gallons down because of the shortage and the conservation and everything a quarter of a billion gallons. That is why we lost a lot of the normal competition.

But it is certainly unfair to saddle on us now further destruction through a Government action like this. It is just useless violence. I don't know of any more useless violence that has ever been perpetrated on us in my 21 years of the business.

Mr. SKELTON. Thank you.

Mr. Bedell.

Mr. BEDELL [presiding]. Mr. Scanlon.

TESTIMONY OF MICHAEL T. SCANLON, VICE PRESIDENT FOR POLICY ANALYSIS, NATIONAL OIL JOBBERS COUNCIL

Mr. SCANLON. Chairman Skelton and Chairman Bedell, members of the subcommittee, my name is Mike Scanlon, and I am vice president for policy analysis with the National Oil Jobbers Council. The NOJC is a federation of 42 State and regional associations that represents some 11,000 independent petroleum marketers. Collectively, these marketers sell about 50 percent of the motor gasoline and about 85 percent of the home heating oil sold in the United States each year.

We appreciate this opportunity to comment about megamergers, and we do have some serious concerns with these mergers. We believe they raise a number of questions, and these questions really have not been satisfactorily answered up to this point.

Perhaps our first and foremost concern is the potential long-term impact such mergers will have on competition within the petroleum industry and upon the independent marketing segment of that industry which we represent.

The FTC, as evidenced by the proposed consent order in the Texaco-Getty merger, appears to focus only on the competitive concerns created by horizontal market overlaps between the two companies. The remedy of company spinoffs of downstream marketing operations may solve the immediate problems posed by these horizontal overlaps. However, this remedy fails to take into consideration the continuing viability of the divested downstream operations.

Particularly in the oil industry, the divested units are often franchisees which are protected by other laws—the Petroleum Marketing Practices Act, for example. Divestiture without consideration of the interests, competitive viability and legal protections of the small business franchisees harms them by depriving them of their source of supply and services. These short-sighted spinoffs may, in fact, create even greater competitive problems, for if these divested units are not viable competitors after the spinoff, their demise could lead to just the kind of anticompetitive situation which the antitrust laws and the FTC and Department of Justice guidelines were designed to prevent.

In essence, the competitive impacts of these mergers with the anticipated spinoffs are threefold. First, the markets served by the company being acquired—for example, Gulf or Getty—they lose a major competitor. Any new company which may acquire those spinoff operations is not likely to be as strong a competitor as the company it replaced unless it, too, is a major integrated company. NOJC would consider a nonintegrated marketing company to be a weaker supplier for these divested independents in that they do not have access to crude oil, especially during a shortfall emergency situation.

Second, the other major integrated companies still competing in the divested markets would be in a much stronger position. A major competitor's sale of assets and supply contracts to a less competitive third party could result in anticompetitive market concentrations down the road.

Third, the acquiring company will have enhanced its position in the market because it has greatly increased its crude oil reserves at a fraction of the cost of new exploration and production.

NOJC would suggest that, in addition to the public interest test, which has been suggested by some, that the FTC and the Justice Department consider what compensation might be appropriate for those franchisees and other customers which have long, established relationships with merging companies and are slated for sale to a third party. We feel that that is one issue that perhaps should be considered.

I have summarized as best I can, Mr. Chairman, in the interest of time. I will take whatever questions the committee might have.

Mr. **Bedell.** Thank you very much, Mr. Scanlon.

[Mr. Scanlon's prepared statement with amendments follow:]

PREPARED STATEMENT OF MICHAEL T. SCANLON, VICE PRESIDENT FOR POLICY ANALYSIS, NATIONAL OIL JOBBERS COUNCIL

Mr. Chairman and members of the Committee my name is Michael Scanlon. I am Vice President for Policy & Analysis of the National Oil Jobbers Council (NOJC). NOJC is a federation of 42 state and regional associations which represents some 11,000 independent, small business petroleum products marketers. Collectively these companies sell nearly 50 percent of the motor gasoline and 85 percent of the home heating oil sold in the United States each year.

We sincerely appreciate this opportunity to appear before the Committee and express our concerns about the recent wave of mergers among the major oil companies. We do indeed have some serious concerns with these "mega-mergers" and we believe they raise a number of questions, questions which have yet to be satisfactorily answered. Our concerns center around several areas and I would like to touch briefly on just a few of those areas.

IMPACT ON COMPETITION

Perhaps our first and foremost concern is the potential long-term impact such mergers will have on competition within the petroleum industry and upon the independent petroleum marketers represented by the National Oil Jobbers Council. In our view, competition at virtually every level of the industry is clearly threatened by the oil industry mergers. Our most immediate concern, however, is the impact these mergers will have on downstream marketing, the segment of the industry in which our members are most involved, and the segment which we believe to be one of the most competitive in the entire petroleum industry.

The FTC, as evidenced by the proposed consent order in the Texaco-Getty merger, appears to focus only on the competitive concerns created by the horizontal market overlaps between the two companies. The remedy of company spin-off of downstream marketing operations may solve the immediate problems posed by these horizontal overlaps. However, this remedy fails to take into consideration the continuing viability of divested downstream operations. Particularly in the oil industry, the divested units are often franchisees which are protected by other laws, the Petroleum Marketing Practices Act, for example. Divestiture without consideration of the interests, competitive viability and legal protections of these small business franchisees harms them by depriving them of their source of supply and services. These short-sighted spin-offs may in fact create even greater competitive problems, for if these divested units are not viable competitors after spin-off, their demise could lead to just the kind of anticompetitive situation which the antitrust laws and the FTC and Department of Justice guidelines are designed to prevent.

Morever, the acquiring companies are playing a game of "briar rabbit" when they are "ordered" to sell downstream marketing operations. In the Texaco-Getty example, may of the properties Texaco is being told to sell off in the midwest are in areas from which Texaco had long since withdrawn and is no longer serving. In the proposed Socal-Gulf merger, Socal would probably be willing to sell off even more of Gulf's refining and marketing facilities than even the FTC may require.

In essence, the competitive impacts of these margers with the anticipated spin-offs are three-fold. First, the markets served by the company being acquired (i.e. Gulf or Getty) lose a major competitor. Any new company which may acquire those spin-off facilities is not likely to be as strong a competitor as the company it replaced, unless it too is a major integrated company. NOJC would consider a non-integrated marketing company to be a weaker supplier for divested independents in that such a supplier would not have access to crude oil, especially during a shortfall emergency.

Second, the other major integrated companies still competing in the divested markets would be in a much stronger position. A major competitor's sale of assets and supply contracts to a less competitive third party could result in anticompetitive market concentrations in future years.

Finally, the acquiring company will have enhanced its position in the market because it has greatly increased its crude oil reserves at a fraction of the cost of new exploration and production and has been ordered by the government to sell off what are generally considered the most unprofitable aspects of the acquired company.

The bottom line in such an analysis is that the major integrated companies tremendously enhance their posture in the market while virtually every independent competitor is hurt. Some people may be comfortable with the consequences of that situation. The National Oil Jobbers Council is not.

Mr. Chairman, please do not misunderstand our posture. We have long questioned the efficiencies of integration, particularly as applied to downstream marketing. We continue to believe that independent marketers are the most efficient marketers in the gasoline business. That functional efficiency, however, is rendered irrelevant if a major integrated company uses upstream crude oil profits to subsidize its downstream markets. We have alleged previously and we still believe that such subsidies exist.

With these mergers, however, fewer and fewer companies will be in a position to provide such marketing subsidies thus putting those few companies which can in a posture to take over any major markets they desire. Critics of the oil industry have for years talked of "The Seven Sisters" and the power they wield in the industry. If the mergers continue will there one day be only three or four "sisters", or perhaps two? What effect would that have on competition?

Allowing these mergers could provide the clarion call for a major legislative restructuring of the petroleum industry such as crude oil divestiture.

IMPACT ON EXPLORATION AND DEVELOPMENT OF NEW RESOURCES

NOJC is also concerned that mergers involving billions of dollars cannot help but have a negative impact on exploration and production of new domestic oil resources. The Texaco-Getty, Socal-Gulf and Mobil-Superior proposed mergers would involve an expenditure of nearly $30 billion and yet would not result in a single new barrel of oil. In testimony before Congress a few years ago, one of the Hunt brothers reportedly made the obervation that "A billion dollars isn't what it used to be." There may be some validity to that observation, but common sense would seem to dictate that when a company, no matter how large, spends billions of dollars to acquire the existing reserves of another company, the incentive for the acquiring company to invest additional capital in possible risky new exploration activity is diminished.

As the incentive to drill for new domestic reserves is reduced by these mergers, the dependence on unstable foreign supplies is sure to be increased. This has a negative impact on the United States' balance of payments, as well as threatening the country's national security.

THREAT OF MORE MERGERS

Any of the announced mergers, if examined separately from the others, may not raise as many questions and concerns. It would be almost akin to examining a single piece of a puzzle. Only when that piece is combined with other pieces does the true picture emerge. Thus, it is with the mergers. Three major mergers have been announced within the last 90 days. Wall Street analysts are speculating on the companies which might be the next takeover target, and at least half a dozen companies are on the list. The mere threat of being taken over can lead a company to take actions which may not be in its own long-term best interests. The March 19 issue of Business Week magazine made the following observation: "Oil companies are under intense pressure to survive by getting bigger through acquisitions and uglier with debt—even though the rising leverage raises risks."

OTHER IMPACTS

There are a whole range of other factors to consider as part of these mergers. For example, what are the consequences of the merger on net revenue to the federal government? Acquiring companies will be able to write off from their federal taxes the interest paid on the money borrowed to finance the acquisition. In addition, it will be able to depreciate and amortize the assets acquired from the acquired company.

What are the impacts on energy resources other than oil or gas? What do these mergers do in terms of combining other resources such as coal and nuclear energy?

What do these mergers mean in terms of unemployment?

What ramifications will these mergers have on small business competitive franchisee customers of the acquired company?

What are the impacts of the mergers on the state and local economies in those areas directly affected?

These are questions we cannot answer, but which we believe need to be addressed prior to any final approval of the mergers.

REVIEW OF PROPOSED LEGISLATION

While NOJC does not believes that S. 2362 is the best way of dealing with the merger issue, we do strongly support what we believe to be its basic intent—that is to examine the serious public policy issues involved in the merger trend. Restricting access to the resources on Federal lands to merger parties probably does more to jeopardize our nation's energy security than to enhance it.

We believe instead that the guidelines under which the Federal Trade Commission examines major corporate mergers should be re-evaluated. The oil industry is perhaps unique in that mergers of the magnitude we are now witnessing can only be approved if certain downstream assets are divested. The real impact of such divestitures have never been examined. We would recommend that final FTC approval of any of these mergers not be given until the ordered divestitures are completed and the full impact of the mergers, including the impact on downstream operations, can be carefully assessed.

The NOJC also supports the concept of a "public interest test" prior to federal approval of large corporate mergers. We believe such a test would require the Federal Trade Commission and the Department of Justice to undertake a more comprehensive inquiry into the competitive effects of such mega-mergers.

We believe a "public interest test" could be viewed as a way of expanding the FTC's and the Justice Department's current merger and antitrust guidelines to include an extensive review of the downstream competitive effects of mandated divestitures emanating from the federal antitrust review.

An expanded federal review of proposed mega-mergers under the "public interest test" should examine the eventual effects of spin-off actions on franchisees and other marketer customers of the two merging companies, such as: (1) ensuring that federally ordered divestitures do not preempt legal rights and protections which franchisees and customers now have with regard to leases or supply contracts (for examples, do "branded" petroleum marketers stand to lose their franchise rights granted under the Petroleum Marketing Practices Act, P.L. 95-297); (2) ensuring that downstream competition is not harmed because the spun-off properties and contracts are sold to a third party which is not as viable a competitor as either the acquired or acquiring company; and (3) ensuring that franchisees and other customers are provided with existing franchise and legal protections even when sold to a third party as part of a federally mandated divestiture action.

NOJC would also suggest that, in addition to the "public interest test", that the FTC and the Justice Department consider what compensation might be appropriate for those franchisees and other customers which have long established relationships with merging companies and are slated for sale to a third party. Tremendous amounts of goodwill have been gained by many small business franchisees over decades of service to major corporations. If these franchisees stand to lose brand identity, national advertising, credit programs and established credit terms, which a third party cannot provide as part of a federally mandated divestiture action, should not these companies be compensated for the goodwill washed down the drain by a federal consent decree?

SUMMARY

This country has enjoyed a period of relative energy stability over the past few years, but that very stability may have led us to drop our guard somewhat. It would behoove us to remember that today's so-called "glut" can suddenly and unexpectedly become tomorrow's shortage. The recent trend to acquire oil reserves via mergers and acquisitions does not bode well for competition within the oil industry, for new exploration and development, for American consumers or for our national security.

Perhaps the thing to keep foremost in mind is that despite the tens of billions of dollars being spent on the mergers, despite the potential threat these mega-mergers pose to competition and to national security, and despite all the other possible consequences associated with the mergers, not a single barrel of new oil will have been added to our reserve base.

We also believe that the FTC and Department of Justice Merger Guidelines must be expanded to include consideration of the effects on small business franchisees of merger approval mechanisms such as divestiture. Currently these Guidelines are written so as to effectively preclude appropriate review of these downstream effects.

Again, Mr. Chairman and members of the Committee, thank you for allowing us to be here today. I will gladly answer any questions you may have.

MEMBERS OF THE NATIONAL OIL JOBBERS COUNCIL

NOJC represents these member associations:

Alabama Oilmen's Association; Arizona Oil Marketers Association; Arkansas Oil Marketers Association, Inc.; California Independent Oil Marketers Association; Colorado Petroleum Marketers Association; Independent Connecticut Petroleum Association; Florida Petroleum Marketers Association; Georgia Oilmen's Association; Idaho Oil Marketers Association; Illinois Petroleum Marketers Association; Indiana Oil Marketers Association, Inc.; Intermountain Oil Marketers Association; Petroleum Marketers of Iowa; Kansas Oil Marketers Association; Kentucky Petroleum Marketers Association; Louisiana Oil Marketers Association; Maine Oil Dealers Association; Michigan Petroleum Association; Mid-Atlantic Petroleum Distributors Association, Inc.; Mississippi Petroleum Marketers Association; Missouri Oil Jobbers Association.

Montana Chapter, Intermountain Oil Marketers Association; Nebraska Petroleum Marketers, Inc.; Independent Oilmen's Association of New England; Fuel Merchants Association of New Jersey; New Mexico Petroleum Marketers; Empire State Petroleum Association; North Carolina Oil Jobbers Association; Northwest Petroleum Association; Ohio Petroleum Marketers Association; Oklahoma Oil Marketers Association; Oregon Oil Jobbers Association; Pennsylvania Petroleum Association, Inc.; South Carolina Oil Jobbers Association; South Dakota Petroleum Marketers Association; Tennessee Oil Marketers Association; Texas Oil Marketers Association; Virginia Petroleum Jobbers Association; Washington Oil Marketers Association; West Virginia Oil Jobbers-Distributors Association; Oil Jobbers of Wisconsin, Inc.; Wyoming Petroleum Marketers Association.

Mr. BEDELL. Mr. Blum.

TESTIMONY OF JACK BLUM, GENERAL COUNSEL, INDEPENDENT GASOLINE MARKETERS COUNCIL

Mr. BLUM. Mr. Chairman, thank you.

My name is Jack Blum, and I am the general counsel of the Independent Gasoline Marketers Council.

I, too, will try to be brief in the interest of time.

There are about three or four points that I think have to be made. First, several people have said that the divestiture order is wrong. I think that you can't overlook the competitive problems in the Denver market that the Commission was addressing. They were very real.

The issue is the remedy. The remedy proposed was the divestiture, and the question is the adequacy of that remedy. Is there a possibility that a viable company will be created? Is there a buyer for the refinery? I think the most important question of all is, how does this remedy back into the remedies that may be proposed, as Socal-Gulf is considered, and then as the next merger, Mobil-Superior, is considered?

If you look at the procedure that we have today for dealing with these mergers, it is totally inadequate for the kinds of remedies the Commission is working with. Procedurally, we operate with Hart-Scott-Rodino, which is a kind of hold everyone in place to let the prosecutor decide whether he wants to go to court.

In fact, that period is being used to work out consent decrees which are effectively an industry restructuring. That is being accomplished in 10-day, 15-day deadlines—against 15-day deadlines. To give you an example, Socal has privately told people they delivered to the Commission last Monday close to 800,000 documents relating to this merger. If these documents were considered at the rate of 1 a second for the next 10 days, the Commission would not get a chance to digest them all. But they would have to work that quickly to look at them all.

My point is that more time is needed in the Hart-Scott-Rodino Act. Time has to be given to put all of these pieces together to let outsiders participate, and then, finally, no divestiture order should be allowed to become final until we see who is buying the property and whether or not they will be viable.

The questions that have been raised here today can be answered if we know there really is a buyer, and that buyer really is a viable entity. At the moment, it is a matter of speculation, and we are told to hope that there will be buyer and we are told to hope that the entity will be viable. If there is no buyer and there is no viable entity, not this committee, not the Commission, not anyone else will have a remedy to go out and find one, because 2 years from now, Texaco can come back and say, "We tried and it has to be sold for scrap," and that is the end of that.

What we really want is, before anyone is allowed to put the two companies together, they have to show us who the buyer is and convince us that it is real and that the divestiture will work. Otherwise, the illegal merger ought to be held illegal, and the Commission ought to go to court. Absent the remedy they are talking about being effective, there is no reason for accepting the consent decree.

So I want more time and I want to see the results before I am confronted with the fait accompli.

We believe that the real issue in these mergers, Mr. Chairman, is crude oil, and that there are a lot of pieces that interplay. I would like to call your attention to something that happened last week. The Commission is working against a moving target. I think they have tried very hard, and there is some expertise there, which is quite good, in the oil industry. But one of the working assumptions has been that there will be crude oil available for whoever buys the El Dorado, KS, refinery.

The problem is that there are two crude oil pipelines coming up from the gulf coast, Texoma and Seaway. Seaway was converted to a natural gas line about 2 years ago. Last week, after the consent decree which assumed the continued existence of Texoma, Texoma has been sold without the pumping stations to Houston Natural Gas, and it will be converted to a natural gas line. This disconnects all of those mid-continent refineries from gulf coast crude supplies, as well as from the strategic petroleum reserve.

As a matter of both energy policy and as a matter of common sense, one has to say that these are interrelated matters, it has tremendous bearing on the viability of the El Dorado refinery, and indeed the midcontinent situation, yet there is no way, given the way these issues are being presented, for anyone to consider them rational.

I think you have to look at the whole picture. Can a new buyer of the refinery in El Dorado count on a supply of crude if Mobil takes Superior? That is an issue that can't be considered in the context of Texaco-Getty, because that merger came later and that is to be decided later.

I submit that this committee really has to examine the procedure and the way people are going about this business, because the last thing we want is to wind up with a highly rationalized, highly efficient industry that leads us into the energy crisis because the people who complained about overcapacity will have been wrong in their projections, as they were the last time around.

Thank you.

Mr. **Bedell**. Thank you, Mr. Blum.

Mr. Columbus.

TESTIMONY OF R. TIMOTHY COLUMBUS, ON BEHALF OF THE SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

Mr. **Columbus**. Thank you, Mr. Chairman.

I have submitted a statement for the record, and I would ask that it be incorporated, but I just want to summarize it very quickly.

Mr. **Bedell**. It will be incorporated in the record.

Mr. **Columbus**. Terrific.

Basically, the Society of Independent Gasoline Marketers of America, whom I represent here today, focused their primary concern in all of this matter with respect to competition at the wholesale level, the level at which our members buy.

The mergers in question and the trend towards increased concentration raises a number of questions with respect to the structure of that market. Specifically, we wonder about those mergers' implications for the viability of independent refiners, who historically have played a very important role in supplying the unbranded segment of the market, not only in terms of the product they supply directly, but the very fact of their viable existence creates a large incentive for integrated companies to deal with our members.

Specifically, if one reviews the margins of profitability on refining and marketing operations in integrated companies as well as independent refiners over the last few years, you will see that those margins have been simply abysmal.

What that suggests to us, very simply, is anyone who would be in the market to buy a refinery such as El Dorado, KS, or Gulf's Port Arthur, TX, plant would have a terrific problem purchasing crude oil even at the posted price, the market price for crude oil, processing that crude oil, servicing the debt on the refinery, and still making the numbers fit in the marketplace. It is our concern, sir, that effectively what you are going to see is a substantial reduction in competition at the wholesale level.

I cannot join my friends down the table in believing that the FTC's staff is insensitive. I have dealt with that staff on issues like this for a number of years. I believe there is an individual there named Mark Schildkraut who is probably, in my own opinion, the most knowledgeable person in the Federal Government about the way the petroleum industry operates.

I subscribe to what Jack has said about the timetable against which they operate. When Hart-Scott-Rodino was enacted, I think we should remember that transactions of this magnitude simply were never conceived. The complexity of the transactions with which the FTC must deal at this point is overwhelming. It is unrealistic for any of us to think that these individuals can walk through the mass of data with which they are faced and come up with a perfectly rational, satisfactory answer the first time through. To address that problem, I think Congress should seriously consider giving the Commission the opportunity to extend those time deadlines in acquisitions of this size to give the staff an opportunity to work on a rational basis within some reasonable timeframe.

Second, I, too, think with respect to acquisitions of this magnitude and this complexity, it would be reasonable to request the acquiring company who has consented to a proposed divestiture to identify the identity of the entity which will acquire those assets which are proposed to be divested. That is the best shot that anybody—staff at the FTC and people in the industry—are going to have to figure out whether or not that proposed remedy will in fact be effective.

It is an enormously complex problem. I think we are kidding ourselves to think that the staff of the FTC, within the time limits available, can answer all the questions that this raises.

With that, Mr. Chairman, I will yield back whatever time I have.

Mr. BEDELL. Thank you very much.

[Mr. Columbus' prepared statement follows:]

PREPARED STATEMENT OF R. TIMOTHY COLUMBUS, ON BEHALF OF THE SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

My name is R. Timothy Columbus. I am a member of the firm of Collier, Shannon, Rill & Scott and appear today on behalf of our client, the Society of Independent Gasoline Marketers of America. SIGMA is a trade association comprised of approximately 250 independent marketers and chain retailers of motor fuels. SIGMA's members operate in 49 of the 50 states and their sales constitute between 10 and 15 percent of the domestic retail market for motor fuels.

SIGMA's members are recognized as being among the most innovative and efficient retailers of motor fuels in the world. They pioneered such cost-saving techniques as self-service and the "high volume/low margin" marketing concept. As a result of their innovations and other cost efficiencies, SIGMA's members are able to minimize the amount of operating costs which must be recovered in the per unit price of motor fuels. This ability has enabled them to offer product to the motorist at the lowest possible price.

A chain retailer's efficiencies are relevant in his market only to the extent that he can obtain product at the wholesale level at a price which is roughly comparable to the cost incurred by his competitors. The Association always has viewed an intensely competitive wholesale market as the best insurance that its members' operating efficiencies will remain relevant in the retail market. It is SIGMA's concerns regarding the implications of the recent wave of mergers within the petroleum industry that brings me here today.

At the outset I must note that SIGMA's greatest concern is not with any particular proposed acquisition. Rather, the Association's members are alarmed by the trend towards increased concentration in our industry and the direct implications of that increased concentration for competition at the wholesale level, *i.e.*, the level at which we buy, as well as its implications for competition at the retail level in which we participate. It is our fear that the consolidation of crude oil reserves in the hands of fewer and fewer companies may have a devastating effect on competition at the wholsesale level by: (1) further endangering the competitive viability of independent refiners, and (2) effectively eliminating some refineries, currently operated by companies being acquired, as viable sources of competitively-priced product.

Recent operating results in the petroleum industry clearly indicate what most of us have believed all along, *i.e.*, that the control of crude oil supplies is the key to economic survival in the refining industry. During the last three years, profits of refining and marketing operations have been simply abysmal. Independent refiners have left the market in large numbers. For the most part, those refiners were not sophisticated processors of crude oil. However, even some of the most sophisticated independent refiners have experienced overwhelming financial difficulties. As examples of this phenomenon I would urge the Committee to take note of Tosco's well-publicized financial difficulties and the recent bankruptcies of Powerine and Hill Petroleum. We believe that the failure of sophisticated independent refiners to achieve tolerable levels of operating profitability is directly attributable to their inability to obtain crude oil at a cost which, when added to their processing costs, permits them to sell refined products at a price which will allow them to compete with their integrated competitors. In contrast, companies which control substantial reserves for crude oil have generated sufficient profits in areas other than refining and marketing to enable them to increase their market share. Thus, we are forced to the conclusion that only those companies which control substantial reserves of crude oil can be viewed over the long term as reliable sources of competitively-priced petroleum products.

If our conclusion, that a supplier's long-term viability is dependent upon its control of substantial reserves of crude oil is correct, then the recent trend toward the concentration of those reserves is ominous. Refiners who control increased percentages of domestic reserves will increase their relative strength in the marketplace at the expense of their non-integrated competitors, As a probable result, competition will be reduced at the wholesale level and thereby generate reduced competition at the retail level.

As recent history has demonstrated, the possession of refining capacity, even sophisticated refining capacity, is not an assurance that a manufacturing entity can remain viable as a competitor at the wholesale level. Thus, an analysis of any particular proposed acquisition, or series of acquisitions, based solely on market share or market overlaps does not guarantee a real understanding of the potential competitive consequences of such acquisitions. Simply stated, the approval of a particular acquisition on the condition that certain assets of the acquired company be alienated does not insure that the structure of competition will be preserved. It must be recognized that the competitive viability of those assets is a function of the capabilities an assets of their owner. Thus, without knowing the identity and resources of the entity which proposes to acquire divested assets, it is impossible to predict the effect on competition of an acquisition conditioned on such divestiture.

If divestiture of particular assets is essential to the government's approval of a particular acquisition, then we believe it is absolutely critical that the divestiture of those assets be accomplished in a manner which reasonably insures that their operation will be a competitively viabile enterprise. Absent such an assurance, the probable result of the acquisitions currently contemplated is an overall reduction in operating refining capacity and a concurrent reduction in competition at the wholesale level. Given the crucial role in maintaining competition played by the capabilities of the entity acquiring divested assets, the only means by which to receive such as assurance is to know in advance the identity of that entity. Absent this knowledge, we are simply rolling the dice with the structure of competition in particular markets.

SIGMA recognizes that the potential dire consequences which we fear may result from increased concentration of control over crude oil reserves, may not come to pass. The proposed transactions are of such enormous magnitude that we are unable to analyze all of the implications. Yet, it is crucial that Congress have the opportunity to consider those implications. Thus, the Association urges Congress to act effectively to slow what appears to be an accelerating trend towards concentration in the industry.

In summary, the competitive viability of independent marketers is totally dependent upon their ability to obtain competitively-priced product at the wholesale level. It appears that the viability of wholesale suppliers is conditioned, to an increasing extent, upon their access to controlled crude oil reserves. The consolidation of domestic reserves into fewer and fewer companies raises significant questions regarding the long-term viability of refiners who do not possess such reserves, and as a result, raises questions about the structure of competition at the wholesale level and indirectly the retail level. Thus, it is essential that acquisitions such as those contemplated today be approved only under circumstances which assure, as a practical as well as theoretical matter, that the structure of competition will not be damaged.

SIGMA appreciates this opportunity to express its views on this matter. I will be happy to respond to any questions which my testimony may have raised.

Mr. BEDELL. I want to thank the panel for summarizing to the extent they have.

Mr. Blum, I need to understand something. Are you telling me that the two pipelines that provided crude oil to some of the refineries in the Midwest will no longer be available to transport crude oil?

Mr. **Blum**. The center area for crude oil in the Midwest is Cushing, OK, which is where the lines come in from west Texas. Those are Texas crudes that come in.

In the past, that terminal at Cushing had been linked to the gulf coast by two other lines, Texoma and Seaway. Both of those lines are now going to be natural gas lines. One has already been converted, one was just sold to be converted. That means that there will no longer be the availability of imported crude through those lines to the Cushing terminal and, therefore, up into the midcontinent to the refineries in Kansas and North.

Mr. **Bedell**. What pipelines will be available to the Cushing terminal to bring in crude oil?

Mr. **Blum**. The lines from Texas, but not the lines from the strategic petroleum reserve. In other words, you will have gathering systems in Oklahoma and Texas, but they will be bringing in the domestic crude, and you won't be able to supplement that crude with foreign source crude.

That means that if an independent wants to come in there and run those refineries in a divested situation, he has really got to find the domestic crudes to run through it. Those domestic crudes, as I have indicated, are going into fewer and fewer hands.

Mr. **Columbus**. Mr. Chairman, if I may, there is an analogy to be drawn here between what we always talk about with respect to access to marketers of a diverse source of supply options. The fact is that those midcontinental refineries very rarely, if ever, run foreign crude oil. The fact that the pipelines existed and thereby offered a supply alternative and created pressure on producers and suppliers of crude oil in the midcontinent to deal with those refineries on a competitive basis. When you eliminate that supply option, you basically take that hammer of potential competition away from domestic participants and local participants in the crude oil market. That is the concern.

Mr. **Bedell**. Also, Mr. Blum, you said something about a problem with the Denver market. I need to understand that.

Mr. **Blum**. What the Commission concluded, and I believe properly, was that Texaco already had a significant piece of transportation capacity going into Denver, in one of the pipelines that goes into the Denver market. Getty owns 50 percent of the Chase pipeline system, which also serves the Denver market. Had the merger occurred, they would have controlled something, I believe, on the order of 30 percent of the refined product pipeline capacity coming into Denver. That would have given them real market power in Denver, and the ability to control marginal supply and, therefore, price.

The Commission rightly said we have to do something about that, and said we have got to get them out of owning an interest in Chase, the pipeline going to Denver. You can't get rid of the pipeline because no one will buy it unless you tie the refinery to the pipeline. Finally, they said no one would buy the refinery unless there were also the marketing assets to go along with it.

We think the significant omission in that was crude oil. We think that, even with the marketing assets and with the pipeline, without guarantees of crude, the likelihood is that that refinery will be closed and competition will significantly be lessened. We keep being told that that won't happen by Texaco, but if Texaco could product the buyer and show us it was operating successfully before this whole thing became final, we would feel a lot better.

I should say parenthetically that this country is littered with the wreckage of companies that were created by the Federal Trade Commission and the Justice Department in early spinoffs. We have Tosco which bought its refineries as a result of a Phillips transaction. That company is on the verge of bankruptcy. There are a half dozen other refiners and marketers that have just disappeared, bankrupt or otherwise—South Central, which is old Sunray-DX. I could go on, but it is really quite pointless. We want to see something that works.

Mr. BEDELL. The final question I would have is in regard to Hart-Scott-Rodino. Does the bill say that the FTC has to act within a certain length of time?

Mr. BLUM. The bill was originally designed to prevent the need for immediate action. In other words, before, the antitrust authorities had to literally race to the courthouse the minute the merger was announced to stop it. This was to give them a little bit of breathing room to look it over to decide whether to prosecute. The idea was to give them a little bit of a period so they could study whether or not they had to go to court.

What has happened is, as the mergers have gotten bigger and more complicated, and the Commission has gone away from simply prosecuting but trying to work out consent orders, the time period has become ludicrously short.

Mr. BEDELL. That is not my question. My question is, does the legislation tell them they have to act in a specified time limit?

Mr. BLUM. It gives them the time back. They don't have to act. They can choose not to act.

Mr. BEDELL. No, that is not my question. If they are going to act, does it say you have to act within a certain period of time?

Mr. BLUM. If they don't act, the company is free to go forward with the acquisition.

Mr. BEDELL. If I might, let me explain my question, and I think maybe I can get the answer I want.

My question is, does the legislation say that if they are going to act, they have to act in a specified period of time?

Mr. BLUM. No.

Mr. BEDELL. So they could wait longer and longer, and take whatever time they needed in order to determine whether or not they should agree to the consent decree or bring action, as far as you understand?

Mr. BLUM. The problem is that, if you wait, the merger gets consummated and you can't unscramble the eggs.

Mr. BEDELL. Wait a minute. They cannot order the merger held for a period of time; is that correct?

Mr. BLUM. That is right.

In other words, they can sue later, but by then, the act will have been done.

Mr. BEDELL. OK.

Are they prohibited from issuing an order that the merger cannot be consummated until such time as they have adequately investigated the merger?

Mr. Blum. No. They are prohibited. They do not have that authority, and they are working against a deadline.

Mr. Columbus. Their option is to go directly to court.

Mr. Bedell. So, very possibly, that needs to be changed legislatively.

Mr. Blum. We think, legislatively, they should be given a lot more time.

Let me give you a parallel. In the railroad industry, which is probably on a par in terms of national interest and complexity, the ICC has taken up to 31 months to approve a merger, after inquiring of customers, shippers, and communities about the impact. These mergers are being looked at in a 10-day or 15-day period.

Mr. Bedell. OK. I don't believe I have any other questions. We certainly appreciate all of your testimony. I think it has been most helpful. Thank you.

Mr. Blum. Thank you, Mr. Chairman.

Mr. Bedell. We now have Tim Muris, the Director of the Bureau of Competition, Federal Trade Commission. I think he has some of his staff with him as well.

We are sorry to keep you, Mr. Muris. We realize what a busy time you have had. We appreciate your being here to testify.

TESTIMONY OF TIMOTHY J. MURIS, DIRECTOR, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION, ACCOMPANIED BY RONALD ROWE, DIRECTOR, PETROLEUM OFFICE, ETC

Mr. Muris. Thank you for inviting us, Mr. Chairman.

With me is Ron Rowe, who is head of our Petroleum Office, and is one of the people in Washington who is most knowledgeable about this industry.

If I could just put my statement in the record——

Mr. Bedell. Great. We appreciate that.

Mr. Muris [continuing]. And let me summarize, and make some observations not necessarily in my statement, trying to respond to some of the points that I have heard here this afternoon.

Mr. Bedell. We appreciate that as well.

Mr. Muris. First, I would like to discuss the fact that we have had a study of the oil merger phenomenon that we did at the behest of Congress, and I would like to explain that a little bit. I would like then to explain briefly our specific oil merger enforcement cases. Then using what happened to the El Dorado refinery as an example, I would like to take you through the steps that we followed and will follow to try to answer some of the questions that have been raised.

We were asked in January 1982 to produce a report—asked by many Members of Congress—to study the phenomenon of large mergers in the oil industry. In September of that year, the Commission fowarded to Congress a 300-page report entitled "Mergers in the Petroleum Industry," which reached several conclusions that may be of interest.

First, it concluded that there were a wide variety of reasons for the mergers that were occurring, including wider use of enhanced oil recovery techniques, the phased decontrol of crude oil, tax reasons, and others.

Second, the Commission concluded that the oil mergers that it had studied didn't adversely affect petroleum prices or availability of supply.

Third, the study found no substantial evidence that increase oil merger activity significantly diverted capital from exploration and development.

Fourth, the Commission concluded that most geographic markets at the various levels of the petroleum industry were not highly concentrated, that mergers generally increased concentration level only slightly, and that such increases did not appear to have endangered the substantial competition that already existed.

Fifth, the Commission found there were some efficiencies from these mergers, at least from certain ones.

Finally, the Commission opposed any legislative ban or moratorium on oil mergers.

Turning to the second point, specific enforcement actions that we have taken, there have been three cases in which the Commission has taken action. There are two more mergers before us now. The three were Mobil-Marathon, Gulf-Cities Service and Texaco-Getty. Each of those had several points in common that I think are useful to summarize briefly.

First, all three involved a major, vertically integrated firm that was acquiring a so-called second-tier firm. Second, in each case, the Commission concluded that there were substantial problems that raised antitrust concern. Third, however, none of the problems were caused by or related to the overall size of the oil companies involved. Fourth, each of the problems the Commission found affected only a relatively small, identifiable region of the country. Fifth, each problem pertained only to one or, at most, a few of the numerous products that a large oil company markets. And sixth, the mergers created no antitrust problems involving the discovery and production of crude oil.

Mr. BEDELL. I am sorry, but are you talking about the——

Mr. MURIS. The three that we looked at previously.

Mr. BEDELL. Including Texaco?

Mr. MURIS. Yes.

Now, Texaco was different in——

Mr. BEDELL. You felt those things you said applied to that merger?

Mr. MURIS. Yes.

But there was one difference between Texaco and the other two cases. In the other two cases, the Commission had filed a motion for preliminary injunction in Federal court to stop the merger. In the Texaco-Getty case, Texaco was willing to remedy the antitrust problems beforehand.

Let me make one thing clear. The Commission's practice has always been—and what we did was in no way a deviation—to try to work the problems out beforehand via consent agreement. The consent agreement that we adopted, including the divestiture procedure, is the procedure the Commission has always followed. In fact, although there was one dissenting vote on the Commission about what we should have done, it had nothing to do with any of the issues that were discussed here today.

In fact, the Commission was unanimous, five to zero, in agreeing that the antitrust issues we're discussing today would be remedied by provisionally accepting that consent agreement. I think that fact is very significant, because you have Commissioners appointed by two different Presidents who run the gambit from quite liberal to quite conservative.

That consent order that we did sign provisionally required substantial divestitures. I am sure you heard a great deal about that divestiture.

Let me walk you through what we are doing in terms of El Dorado, the refinery in Kansas, how we got there, and what will happen in the future.

One fact that is crucial to understand is that Getty wanted to sell to someone. These assets were going to end up in somebody's hands, as it turned out, either Pennzoil or Texaco. Pennzoil raised no antitrust problems. But the option of the assets remaining in Getty's hands was simply not there. For various reasons, the owners of Getty wanted to sell. A lot of the problems that people are raising are caused by uncertainty, and that uncertainty would have existed regardless of what we at the Federal Trade Commission did.

In Colorado, as Mr. Blum explained, there are very few sources for transporting refined products, particularly gasoline, into the Denver area, in particular, and into Colorado, in general.

We found that the merger was going to significantly concentrate in the hands of one company the ability to control a significant portion of petroleum product supplies sent into the Colorado area. We thought that raised an antitrust problem. We required that the Getty pipeline into Colorado be divested. But you can't divest a pipeline just by itself, so we required that the refinery in El Dorado, KS, to which the pipeline is attached be divested as well.

We found out, after talking to people, that the most attractive package for divestiture would be also to order divestiture of all the "downstream" assets that were associated with the El Dorado refinery. So we also ordered Texaco to divest a number of Getty's wholesale terminals, gas stations, and other marketing assets.

Procedurally, the consent agreement was provisionally accepted and published in the Federal Register on March 7. There is a 60-day public comment period in which people can file public comments. Before that, by statute, the Commission could not engage in any kind of public discussion with, or release of, confidential data to individuals other than who are involved with the transaction. There were some statements to the effect that people really couldn't talk to us about Texaco-Getty. Before the consent agreement was provisionally accepted, they could come in and talk to us, but the Commission could not announce that it was even looking at the merger, and could not announce any facts about the merger. We are prohibited by statute from discussing publicly or revealing confidential information about a merger submitted under our premerger notification program before the Commission takes some sort of law enforcement action.

We took that law enforcement action on March 7 and there is a 60-day comment period, during which time the Commission will seek comments, after which we will review them.

One thing is absolutely clear, and it is that we share a substantial interest with what the people are testifying about today. That is, we want what they want. We want those assets to stay in business, because our theory of competition is that those assets that are connected with the El Dorado refinery are necessary to maintain competition, at least in the Colorado area. We are prepared to go to great lengths to obtain this result.

Let me explain the steps that we will go through. Texaco has 12 months to divest, assuming the consent agreement is finally accepted. If Texaco does not divest, then—automatically—there is triggered a procedure in the consent agreement by which a trustee who does not work for Texaco will be allowed to sell those assets. He will be told that his job is to sell the assets.

He then has 18 months. During this whole 30-month period, Texaco is required to, subject to our being able to take them to court and make them live up to their obligation, maintain the viability and marketability of the assets. That includes the gas stations and everything else.

When a buyer is found, Texaco has to file a request with us, and we have to approve that particular buyer. We will look at things such as the buyer's competitiveness. There will have to be detailed financial statements about why the buyer is willing and able to continue the assets in business. We are obviously going to be quite concerned about whether the buyer has a viable source of crude oil.

We will put the request to approve a particular buyer on the public record. There is an opportunity for 30 days of comments. Again, we look at those comments with the idea in mind of answering the same concern that people had here, which is that we want the assets to remain in business. We want what those people want. We want a viable refinery, viable pipeline, and viable marketing assets.

Mr. **Bedell.** I don't want to interrupt you, but are you saying you have to approve any buyer that Texaco selects for any of their facilities? Is that what you are saying?

Mr. **Muris.** Yes; the facilities subject to the consent agreement.

Just to finish, we have a lot of experience with this procedure. In virtually every case, that procedure has resulted in a sale of an ongoing business. That doesn't mean that the assets sold will remain in business forever. No one obviously can guarantee that. But historically we have had good success with the procedure that we are following here, which is to sign a consent agreement which requires divestiture in the future. In virtually every case we have been able to have a divestiture.

That really concludes my prepared statement.

[Mr. Muris' prepared statement with attachments follow:]

PREPARED STATEMENT OF TIMOTHY J. MURIS, DIRECTOR, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION

Mr. Chairmen and Members of the Subcommittees: I appreciate the invitation to appear here today to discuss the issue of mergers in the petroleum industry. As Director of the Federal Trade Commission's Bureau of Competition, my focus will be upon the competition and antitrust implications of petroleum mergers and acquisitions, that is, their effect upon the price and availability of petroleum products for the American consumer. My views are those of the Bureau of Competition, and do not necessarily represent those of the Commission or of any individual Commissioner.

A substantial portion of the FTC's antitrust work involves reviewing corporate mergers and acquisitions [1] to assure they do not violate federal antitrust laws. The FTC's Bureaus of Competition and Economics have developed considerable expertise in analyzing competition issues involving the petroleum industry. The Bureau of Competition, for example, has for several years maintained a separate Petroleum Division, consisting of antitrust attorneys and other professionals who specialize in analyzing competition issues in the petroleum industry. The agency's staff has developed its expertise over many years, in several cases and investigations. These matters include the Commission's *Exxon* case against the major petroleum companies (dismissed in 1981) and the oil company mergers that have occurred over the past few years.

Given this considerable petroleum industry experience, it is not surprising that the Commission is performing the government's antitrust review of the current oil mergers—Texaco/Getty, Socal/Gulf, and Mobil/Superior. As the Subcommittees are aware, the Commission has provisionally accepted a consent agreement remedying potential antitrust concerns raised in the *Texaco* matter. The Commission's proposed remedy is now on the public record, and interested persons will have until May 7 to file written comments.

The Commission's staff is presently in the midst of its intensive review of the proposed Socal and Mobil transactions, however. Therefore, it is premature to attempt any detailed discussion of those mergers' likely impact. I will, nevertheless, be happy to discuss both the procedures the Commission is using to review those mergers and the antitrust concepts relevant to petroleum mergers in general.

In this testimony, I first discuss our 1982 study of oil mergers, one of the most detailed and comprehensive studies published on the subject. I next evaluate our past enforcement regarding oil mergers, in particular the recent provisionally accepted consent agreement in the Texaco/Getty matter. Finally, I discuss briefly the issue of increased concentration in production of crude oil.

I. THE 1982 PETROLEUM MERGER STUDY

In January 1982, eight congressional leaders from both houses of Congress asked the Commission to investigate the impact of mergers and acquisitions involving large petroleum companies. The Commission directed its petroleum industry experts to conduct an in-depth, exhaustive review of numerous issues involved in petroleum industry acquisitions. Just 19 months ago, in September 1982, the Commission forwarded to Congress its 300-page report entitled, "Mergers in the Petroleum Industry," presenting its analysis and conclusions.[2] This "Oil Merger Study" reached a number of significant conclusions regarding oil mergers that are relevant to the issues currently before Congress. It may therefore be helpful to summarize these conclusions.

First, oil industry acquisition activity did increase during the 1979–1980 period studied, although a few large transactions accounted for much of the increase. (As I discuss below, heightened activity has again resurfaced in recent months.) Second, petroleum mergers occur for a variety of reasons, including: wider use of enhanced oil recovery techniques; divergent expectations concerning future crude oil price movements; the phased decontrol of crude oil; the imposition of the windfall profits tax; and corporate income tax provisions such as those permitting an increased basis of acquired assets, and redepreciation of assets for tax purposes.

Third, the Commission concluded in the Oil Merger Study that it did not believe that acquisitions occurring in the period studied adversely affected petroleum product prices or availability of supply. Fourth, the Oil Merger Study found no substantial evidence that increased oil merger activity significantly diverted capital from exploration and development of energy sources. Indeed, the Study found that crude oil exploration and production generally increased during the period of increased oil merger activity. (Of course, this conclusion was based on evidence available at the time, and we will continue to study this and other issues as we evaluate current merger activity.) Fifth, the Commission concluded that most geographic markets at the various levels of the petroleum industry were not highly concentrated; that mergers generally increased concentration levels only slightly; and that such increases did not appear to have endangered the substantial competition the Commission found to exist in most aspects of the petroleum industry.

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[1] As a convenient shorthand, I will henceforth refer only to "mergers."

[2] Commissioners Pertschuk and Bailey attached separate statements to the report noting, inter alia, that they did not agree with all the conclusions reached in the report.

The remaining conclusions of the Oil Merger Study appear especially relevant to the Subcommittees' deliberations. The Commission concluded, sixth, that transaction costs—including investment banking and legal fees—for most petroleum acquisitions range from one-half of one percent to one percent (and in some cases exceeded one percent) of the total purchase price. Seventh, the Commission identified several possible efficiencies that resulted from some petroleum mergers. These include application of technical know-how to increase crude oil production and benefits flowing from reevaluations of crude oil reserves.

Finally—and perhaps most pertinent for the Subcommittees' present deliberations—the Commission recommended against any legislative ban on oil company mergers. The Commission concluded that: "Such interference in normal market forces is unwarranted, both because there have been no significant adverse implications on the state of competition in the industry from mergers, and because mergers with significant competitive impact can be satisfactorily examined under Section 7 of the Clayton Act and the 1976 Hart-Scott-Rodino amendments to that statute." [3]

With this Study as a general framework, I will now turn to a brief summary of the Commission's recent investigative and enforcement actions involving petroleum industry mergers. Such a summary is useful to place the current merger activity in context.

II. RECENT FTC ACTIONS AGAINST PETROLEUM MERGERS

A. Mobil/Marathon

Perhaps the logical starting point is Mobil's unsuccessful attempt in late 1981 to acquire Marathon. As the Subcommittees will recall, that bid followed an earlier unsuccessful attempt by Mobil to acquire Conoco, which instead became a DuPont subsidiary. The FTC's investigation of the proposed Mobil/Marathon merger revealed significant potential antitrust concerns involving competition in certain "downstream" markets—those involving the wholesale and retail distribution of gasoline, home heating oil, and certain other petroleum products. The Commission determined that these concerns were too significant to permit the merger to proceed, and filed a preliminary injunction suit to block the merger.

It is useful here to correct a common misconception about the FTC's enforcement action in the Mobil/Marathon case. Some have said that it was a private antitrust suit by Marathon that blocked Mobil's takeover bid, and that the FTC's subsequent action was too tardy and had no effect. Yet, the FTC utilized all of the statutory time period permitted under the Hart-Scott-Rodino premerger notification procedures to allow for an analysis as thorough and as focused as possible. Marathon's private suit certainly played a major role in the eventual success of U.S. Steel in acquiring Marathon. The Commission, however, was ready, willing, and able to litigate its preliminary injunction suit had that proven necessary to prevent the anticompetitive aspects of Mobil's proposed acquisition of Marathon.

Another misconception of the Commission's role in Mobil/Marathon arose at hearings last month before the Senate Judiciary Committee. In his prepared statement at that hearing, FTC Commissioner Pertschuk charged that Chairman Miller ignored the "problem that Mobil would not follow Marathon's traditional pattern of supplying independents, particularly gasoline marketers." [4] This is simply inaccurate. Chairman Miller voted to support the theories discussed in the brief filed supporting the Commission's request for a preliminary injunction. In that brief, the Commission discussed in detail the very problem Commissioner Pertschuk accuses the Chairman of ignoring. [5]

B. Gulf/Cities Services

The next major Commission action involving this industry occurred when Gulf Oil Company attempted to acquire Cities Services Company in mid 1982. Once again, the FTC conducted its review under the Hart-Scott-Rodino procedures, and once again the Commission determined that enforcement action was required to forestall anticompetitive consequences. Following the Commission's filing of a preliminary injunction suit, Gulf abandoned its bid to acquire Cities Services. Occidental Petroleum Company—also one of the smaller, "second-tier" oil Companies—subsequently acquired Cities Services. The FTC closely reviewed that merger as well, concluding it presented no danger of any substantial lessening of competition.

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[3] See FTC Report "Mergers in the Petroleum Industry," supra, at 298.

[4] Testimony of Michael Pertschuk, Commissioner, Federal Trade Commission Before the Senate Judiciary Committee (March 15, 1984) at 8.

[5] Commissioners Pertschuk and Bailey noted in separate statements supporting an injunction that they objected to inclusion in that suit of specific reference to particular terms of settlement, not yet agreed upon, that might remove the need for injunctive relief.

C. Texaco/Getty

The Texaco/Getty merger followed the pattern of the prior two transactions: a "major," vertically-integrated petroleum company attempting to acquire a smaller, second-tier firm, primarily to gain control over the latter's crude oil reserves. And, the FTC once again concluded that the proposed merger raised substantial antitrust concerns warranting enforcement action. (I should note here that, in contrast to the Mobil/Marathon case, two private antitrust suits failed to block the merger.)

The Commission's expertise in the petroleum industry enabled it promptly to pinpoint four antitrust problems. First, the merger raised concerns about competition in the manufacture and transportation of "refined light products" in the northeastern United States. These products include gasoline, fuel oil, jet fuel, and kerosene. Second, the merger threatened to reduce competition in the wholesale distribution of gasoline, home heating oil, and diesel fuel to retailers in the Northeast. Third, the Texaco/Getty combination raised a danger of diminished competition in transporting refined light products by pipeline into Colorado. Finally, the merger might result in the demise of independent refiners in California, reducing competition in the already moderately concentrated California refinery market.

Several crucial facts can be gleaned from close scrutiny of these potential antitrust problems: First, none of the competition problems are caused by, or even related to, the overall sized of the oil company created by combining Texaco and Getty. Second, each of the problems affects only a relatively small, identifiable region of the country. Third, each problem pertains only to one or at most a few of the numerous products marketed by a large, integrated oil company. Fourth, the Texaco/Getty merger created no antitrust problem involving the discovery and production of crude oil.[6]

The four antitrust concerns identified were serious ones. The Commission's staff of economists and lawyers, however, unanimously concluded that they could be remedied without barring the entire merger. Texaco, for its part, was willing to do so. It is important here to stress two points: First, firms proposing to engage in potentially anticompetitive acquisitions are not always cooperative in working with the Commission to alleviate competitive problems; and second, when such firms are willing to cooperate, our standard practice has always been to attempt to obtain by means of a consent agreement the relief necessary to remedy the perceived antitrust problems.

Thus, following our standard practice in merger investigations, we discussed with counsel for Texaco whether the antitrust concerns could be eliminated. As a predicate for any possible settlement of the antitrust issues, we insisted upon a signed agreement obligating Texaco to maintain Getty as a separate, viable oil concern throughout the public comment period while the Commission assessed whether to give final approval to any consent agreement that was reached. When Texaco agreed to this precondition, negotiations continued on the question of remedying the antitrust concerns.

Following these negotiations, Texaco agreed to submit to an FTC order that the agency's staff of economists and attorneys unanimously agreed would remedy any possible anticompetitive harm from the merger. As the Subcommittees are aware, a four-member majority of the Commission provisionally accepted that consent agreement on February 13, 1984.

With your permission, I will submit for the record a copy of that consent agreement, together with a copy of the proposed complaint setting forth the Commission's allegations of competitive harm, the hold separate agreement signed by Texaco, and a detailed staff analysis of the antitrust concerns and the relief the Commission obtained.

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[6] The California problem did not concern the discovery and production of crude oil, even if California is treated as a separate geographic market. Instead, the potential competitive problem we found related to refiners who had built plants designed to use the cheaper, "heavy" crude oil that Getty sold. Although these refineries produce the same products as do refineries using lighter crude, the cost of retooling the refineries to rely on more-expensive, lighter crude is so high that loss of a reliable source of heavy crude over the mid-term (three to five years) could lead to their departure from the market.

D. The Texaco/Getty consent order

The relief in the consent agreement addresses each of the four potential competitive concerns outlined above. It does so in a precise, focused manner: the Commission's knowledge of the industry enable it to cut with a scalpel, not a meat cleaver. At the same time, the relief resolves all of the competitive concerns. Both of these propositions are readily apparent from a brief summary of that relief.

To remedy any possible increased incentive Texaco might have to restrict the output of refined light products available in the Northeast, the order requires Texaco to take two significant steps. First, it must divest its Eagle Point, New Jersey refinery to a buyer approved by the FTC. The Commission will review proposed buyers to assure they can operate the refinery as a competitive facility likely to remain in the market. Second, for ten years Texaco must always vote in favor of proposals tc expand the Colonial Pipeline. Along with other petroleum firms, Texaco is a co-owner of Colonial, which transports refined products from the Gulf Coast through the Southeast and into the Northeast. These two provisions, working together, will diminish the possibility of supply restrictions in the Northeast.

In addition, the Commission's order requires Texaco to divest its wholesale gasoline terminal operations in six Northeast areas (and a seventh in Colorado). To assure that Texaco could make an adequate divestiture of the wholesale terminals, the order also requires Texaco to divest some 1900 retail gasoline stations that the wholesale terminals supply. Once again, the Commission must approve in advance the buyers of these properties.

This last point merits some elaboration. It is true that Texaco—on its own initiative and without consultation with the Commission or its staff—has entered a contract to sell these Northeast wholesale and retail properties to an independent gasoline marketer operating under the "PowerTest" name. Texaco entered this contract in part to reduce its antitrust exposure in a private (and unsuccessful) antitrust suit brought by Pennzoil to block the acquisition of Getty. The Commission has not approved PowerTest—or anyone else—as a buyer of any of the acquired Getty assets. After the Commission gives final approval to the consent agreement, Texaco will be required to submit proposed buyers for FTC approval. Interested persons will then have a 30-day public comment period to submit written comments on the question of whether PowerTest or any other proposed buyer should be approved. Among the factors the Commission will consider is whether the buyer is willing and able to maintain the assets as viable properties in competition with those of existing firms. As with other properties to be divested, the Commission will insist upon adequate assurances that the properties will remain competitive.

The third principal provision of the consent agreement requires Texaco to divest Getty's substantial ownership interest in the Chase pipeline, which is one of four pipelines that delivers refined light products into the Denver, Colorado area. Texaco already owns a portion of another of those pipelines, raising an obvious antitrust concern. To prevent Texaco from using its partial control over two of the four pipelines to raise prices to consumers in Colorado, the Commission required Texaco to shed its interest in the Chase pipeline. The pipeline probably could not be sold by itself, however, because it is only valuable in conjunction with the El Dorado, Kansas refinery to which it is connected and which supplies the products shipped to Colorado. Again for the sole purpose of assuring that adequate divestiture could be accomplished, the Commission elected to take the prudent enforcement approach and to also require divestiture of the El Dorado refinery and the associated assets necessary to operate it and supply it with crude oil.

We will pay close attention to the question of whether a proposed buyer of the El Dorado refinery will be willing and able to operate it succesfully so that it adds competition to the marketplace, while simultaneously maintaining productive employment for Kansas. In this regard, one factor of particular interest will be whether the buyer will be able to obtain an adequate supply of crude oil and other feedstocks necessary to operate the refinery. The Commission's requirement that Texaco sell crude oil gathering pipelines running from crude oil fields to the El Dorado refinery should go far to assure that goal.

The final substantive order provision requires Texaco to continue to sell so-called "heavy" crude oil to independent California refiners that bought from Getty prior to its merger into Texaco. Those refiners have in many cases made costly adjustments to their refineries to process this unique type of crude oil. The merger raises a concern whether such refiners can continue to obtain a crude supply, because Texaco may have tax incentives, unrelated to the efficient use of the resources involved, to use heary crude oil in its own West Coast refineries. Such a shift could weaken competition from independent refiners, and might even cause some to leave the market. To prevent such problems, the consent order requires Texaco to continue supplying those current Getty refiner-customers for a 5-year period. By that time offshore sources of heavy crude oil already discovered would be more than ample to eliminate any supply problems the merger might create for independent refiners.

Although the total cost of the assets Texaco is ordered to divest is small relative to the total $10.1 billion cost of the acquisition, it is nonetheless substantial—running into several hundreds of millions of dollars. (The precise cost of the to-be-divested assets is of course uncertain, because potential buyers need not be arranged until after the Commission gives final acceptance to the consent order.) Further, the Commission's staff estimates that the value of the crude oil Texaco is required to sell to certain independent California refiners will exceed $3 billion over the 5 years the supply obligation will be in place. By any measure, the magnitude of this relief is substantial.

E. Conclusion regarding FTC enforcement

Thus, in each of the proposed mergers involving attempted takeovers by a "major" oil company of a second-tier oil company, the FTC pursued enforcement action. Some have apparently forgotten these vigorous actions. Thus, one hears cries that the Commission's allegedly "lax" merger enforcement policy was somehow a driving force behind the latest "big oil" mergers. As noted, the facts belie such claims. If there was a message to be drawn from prior FTC actions, it was that mergers between competing oil concerns would be subjected to rigorous antitrust scrutiny and, if antitrust concerns were found, would be challenged.

Some of the criticism may be due to a fundamental misunderstanding of the competitive nature of the oil industry, particularly at the level of crude oil production. I turn next to this issue.

III. INCREASED CRUDE OIL CONCENTRATION

One of the most frequent concerns that has been raised in recent days regarding petroleum industry mergers is that they are concentrating the ownership of United States crude oil reserves in the hands of a very few large oil companies. Such concentration is dangerous, it is said, to consumers.

It is useful to step back and place these assertions in perspective. The Commission's 1982 Oil Merger Study concluded, for instance, that the petroleum industry in general—and the production of crude oil in particular—is relatively unconcentrated. This conclusion is supported when one analyzes how mergers involving crude oil reserves have historically been treated under the federal government's merger enforcement guidelines.

A. The 1982 guidelines

In each of the major oil company mergers it has analyzed in the past few years, the Commission has applied the analytical approach detailed in the Commission's 1982 "Statement on Horizontal Mergers" and in the Justice Department's 1982 Merger Guidelines. These guidelines make clear that concentration is a necessary but not sufficient condition before the government will attack a merger. Unless certain specified levels of concentration are reached, the conditions for non-competitive performance in an industry are unlikely to exist. Although there may be a few special problems in crude oil,[7] in general, the concentration level is very low in crude oil. Tables 1 and 2 provide the latest available statistics for crude oil production and reserves in the United States.

TABLE 1.—U.S. CRUDE OIL, CONDENSATE AND NATURAL GAS LIQUIDS PRODUCTION, 1982

[Thousand barrels per day]

Company	Production	Percent of total
Exxon	740.0	7.3
Standard of Ohio	694.9	6.8
Atlantic Richfield	607.4	6.0
Shell	519.0	5.1
Standard of Indiana	409.0	4.0
Texaco	352.0	3.5
Standard of California	332.0	3.3
Gulf	328.7	3.2

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[7] See FTC Report "Mergers in the Petroleum Industry", supra, at 151–54.

TABLE 1.—U.S. CRUDE OIL, CONDENSATE AND NATURAL GAS LIQUIDS PRODUCTION, 1982—Continued

[Thousand barrels per day]

Company	Production	Percent of total
Mobil	309.0	3.0
Getty	280.0	2.7
Phillips	260.0	2.5
Sun	212.1	2.1
Union	171.4	1.7
Marathon (U.S. Steel)	160.1	1.6
Occidental	151.0	1.5
DuPont	136.0	1.3
Tenneco	89.1	0.9
Amerada Hess	76.5	0.8
City of Long Beach	70.0	0.7
El Paso	67.2	0.7
Union Pacific	59.4	0.6
Superior	57.3	0.6
Santa Fe	44.7	0.4
Mitchell Energy and Development	41.9	0.4
Louisiana Land and Exploration	41.4	0.4
Aminoil (R.J. Reynolds)	39.6	0.4
InterNorth	37.5	0.4
Pennzoil	35.1	0.3
Diamond Shamrock	33.4	0.3
Texas Oil & Gas	33.1	0.3
Others (all smaller than the top 30)	3,810.2	37.4
U.S. total	10,199.0	100.0
Top:		
4	2,561.3	25.1
8	3,983.0	39.1
15	5,526.6	54.2
20	5,965.4	58.5
30	6,388.8	62.6
HHI (after Texaco/Getty acquisition)		270

TABLE 2.—PROVEN U.S. CRUDE OIL, CONDENSATE AND NATURAL GAS LIQUIDS RESERVES, 1982

[Millions of barrels]

Company	Reserves	Percent of total
Standard of Ohio	2,855.6	8.1
Exxon	2,836.0	8.1
Atlantic Richfield	2,561.0	7.3
Shell	2,200.0	6.3
Standard of Indiana	1,660.0	4.7
Getty	1,241.0	3.5
Standard of California	1,202.0	3.4
Texaco	1,045.0	3.0
Mobil	906.0	2.6
Gulf	816.0	2.3
Sun	691.0	2.0
Marathon (U.S. Steel)	606.3	1.7
Occidental	583.0	1.7
Union	523.0	1.5
Phillips	492.0	1.4
DuPont	350.0	1.0
Amerada Hess	260.0	0.7
Tenneco	251.7	0.7

TABLE 2.—PROVEN U.S. CRUDE OIL, CONDENSATE AND NATURAL GAS LIQUIDS RESERVES, 1982—Continued

[Millions of barrels]

Company	Reserves	Percent of total
Pennzoil	140.0	0.4
Superior	138.7	0.4
Santa Fe	138.3	0.4
Union Pacific	137.6	0.4
El Paso	136.2	0.4
Aminoil (R.J. Reynolds)	120.9	0.3
Mitchell Energy & Development	111.6	0.3
Southland Royalty	81.8	0.2
Texas Oil and Gas	79.3	0.2
Louisiana Land and Exploration	69.0	0.2
Enserch	61.5	0.2
Kerr-McGee	60.1	0.2
Others (all smaller than the top 30)	12,724.4	36.3
U.S. Total	35,079.0	100.0
Top:		
4	10,452.6	29.8
8	15,600.6	44.5
15	20,217.9	57.6
20	21,358.3	60.9
30	22,354.6	63.7
HHI (after Texaco/Getty acquisition)		329

The numerical standards embodied in the 1982 Justice Department Merger Guidelines ("Guidelines") use the "Herfindahl-Hirschmann" index, often abbreviated as the "HHI" index. In a nutshell, the likelihood of a government challenge to a merger between competitors is based upon the post-merger HHI index and the size of the HHI change caused by the merger. For example, a challenge is unlikely under any facts when the HHI value after the merger is below 1000 "points". At the other extreme, a challenge is likely when the merger increases the HHI index by more than 100 points to above the 1800 level. Table 3 summarizes these standards.

TABLE 3.—*DOJ 1982 merger guidelines*

HHI	Action
Post-Merger HHI below 1,000	Unlikely to challenge.
Post-Merger HHI between 1,000 and 1,800:	
Change in HHI below 100	Unlikely to challenge.
Change in HHI above 100	More likely than not to challenge.
Post-Merger HHI above 1,800:	
Change in HHI below 50	Unlikely to challenge.
Change in HHI between 50 and 100.	More likely to challenge, depending on other factors.
Change in HHI above 100	Likely to challenge.

Applying these enforcement guidelines to the market for crude oil, it can be seen that no merger between competing oil companies is likely to be challenged based on its effects in the overall crude oil market. The HHI measured in term of U.S. production is only about 270 and in terms of U.S. crude oil reserves is approximately 329.[8] All of these values are well below the 1000 HHI level that normally triggers potential antitrust concern with a merger between competitors.

In 1979, the staff of the House Judiciary Committee's Subcommittee on Monopolies reached a similar conclusion, stating:

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[8] This discussion assumes the United States as the relevant geographic market. See FTC Report "Mergers in the Petroleum Industry," supra, at 149–54.

4. Using a variety of concentration ratio guidelines and empirical estimates, U.S. crude oil production does not appear to be sufficiently concentrated to affect competition adversely.

5. While holdings of domestic crude oil reserves appear somewhat more concentrated than production, reserves concentration does not strongly suggest the existence of market power.[9]

It is important to emphasize that these facts do not mean that large oil companies can merge at will under the antitrust laws. Once one moves "downstream" to refining, marketing, and distribution, significant antitrust problems can exist. Indeed, as explained above, the Commission found such problems in each of the three large oil mergers it has evaluated.

B. 1968 guidelines

A similar enforcement policy was indicated under what are widely viewed as the more stringent enforcement standards of the (now superseded) 1968 Department of Justice Merger Guidelines. The 1968 guidelines for horizontal mergers applied a set of market-share-based standards to determine whether the Department was likely to challenge a given merger between competitors. Which of three "bright-line" market share tests applied to a given merger depended upon whether the market was "highly concentrated" (then defined as one in which the top four firms accounted for 75 percent or more of sales), "less highly concentrated" (the top four firms having a combined share of less than 75 percent), or experiencing a "significant trend toward concentration".

In terms of the 1968 Guidelines, the overall crude oil market would clearly not fall into the strictest "highly concentrated" category. The top four firms combined have nowhere near a 75 percent market share. Similarly, it is highly unlikely that, despite the recent increase in oil merger activity, the crude oil market could qualify as one having a significant trend toward increased concentration under the definitions of the 1968 Guidelines. Indeed, from 1970 to 1982 concentration in crude oil production decreased slightly.

Thus, the applicable standards would be those of the "less highly concentrated" category. Based upon 1982 production figures, only a merger between to of the top five crude oil producers (i.e., Exxon, Sohio, Arco, Texaco, and Shell) or of the top five holders of crude oil reserves (the same firms) would "ordinarily" have been challenged by the Department of Justice under the 1968 Guidelines. Only in a merger involving two of those five firms would both the acquiring and acquired oil company have crude oil market shares of five percent or more.

To see this, consider an application of the 1968 Guidelines standards (by which a merger between a firm with five percent or more and competitor with five percent or more will ordinarily be challenged) to the recent Texaco/Getty merger. Texaco, with a 3.5 percent market share in crude oil production, acquired Getty, with 2.7 percent of crude production. If crude reserves were used to measure market shares (in place of production) the result is similar. Getty's share of known crude oil reserves was higher than its percentage of production; its merger with Texaco resulted in Texaco, with 3.0 percent of crude reserves, acquiring Getty's 3.5 percent of crude reserves. Under either measure, the five percent/five percent standard is not met.

It is worth noting that the Federal Trade Commission has abandoned strict reliance on concentration in deciding whether to bring merger cases. In 1982, a unanimous Commission, including members appointed by three different Presidents, wrote that "an increase in the threshold market shares is clearly justified" and that "consideration of additional market characteristics [beyond market share], entry barriers being the major example, may provide a clearer and more accurate picture of the competitive dynamics." [10]

In any event, under either the more stringent 1968 merger guidelines or the superior 1982 guidelines, the relevant product market that has been cited as most troublesome by some critics of petroleum mergers—the production of crude oil—was not sufficiently concentrated in the Texaco/Getty merger to trigger the government's merger enforcement standards.

Of course, in each petroleum merger investigation the Commission will analyze each possible product and geographic market in which the merging firms are competitors—using the standards of its own Horizontal Merger Statement and the Department of Justice's 1982 Merger Guidelines—to assess the likely competitive effects of the merger. When it finds competitive overlaps of a magnitude sufficient to endanger competition, the Commission will do what it has done in every petroleum merger it has reviewed: it will take whatever law enforcement action is necessary to prevent injury to competition.

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[9] Staff of House Subcomm. on Monopolies, Comm. on Judiciary, 96th Cong., 1st Sess., Interdependence in Domestic Crude Oil: Joint Ventures, Farm Outs, Exchanges, and Gathering Lines, 1 (Comm. Print 1979).

[10] FTC Statement Concerning Horizontal Mergers, at 3 (June 14, 1982).

IV. CONCLUSION

The Commission had developed considerable expertise over the past years in analyzing the competitive impact of mergers in the petroleum industry. In each such merger, it has completed its antitrust review under the Hart-Scott-Rodino procedures and has taken law enforcement action necessary to assure that no unlawful lessening of competition results. The Commission has opposed any merger moratorium legislation as unnecessary to prevent anticompetitive mergers and as an unwarranted interference with market forces. I believe that position remains sound. Thus, the Subcommittees should be advised that, although there may be other policy grounds underlying the adoption of any such legislation, such a measure is neither essential for, nor certain to contribute to, the preservation of a competitive oil industry for the benefit of American consumers.

Mr. **Bedell.** I have quite a lot of questions.

Mr. Sisisky.

Mr. **Sisisky.** Did you hear the testimony this morning of the truck stop operators in the Midwest?

Mr. **Bedell.** Mr. Rowe did, I assume.

Mr. **Rowe.** No. I was not here.

Mr. **Muris.** We were involved with the GM-Toyota matter, but I had a chance to read some of what they had to say.

Mr. **Sisisky.** They said something that really bothered me. As I understand it—and correct me if I am wrong—Texaco was not involved in the Midwest; is that true? They do not distribute products in these States; am I correct?

Mr. **Muris.** Yes, sir. The assets that we are requiring to be divested are Getty assets.

Mr. **Sisisky.** Then why in the world, if they did not have any assets, how would they be restraining trade, so that you want them to divest themselves of Getty? Tell me your reasoning, because it doesn't make sense.

Mr. **Muris.** The problem is in Colorado. There is a refinery in Kansas. A pipeline runs from that refinery to the Denver area. Getty controlled a significant portion of that pipeline. There was only one other significant pipeline that flowed to the Denver area by which one could expand the shipment of gasoline into the Denver area. Texaco controlled a significant portion of that pipeline.

The merger meant that, between them, the new Texaco-Getty Co. would have had too much power over the ability to transport and price gasoline and other products in Colorado.

Mr. **Sisisky.** That's Colorado. Let's talk about the other Midwest States. If you talk about Texas, how many outlets did Getty have in Texas?

Mr. **Muris.** If you let me finish, I think I can get to that.

Mr. **Sisisky.** OK.

Mr. **Muris.** You can't sell a pipeline just to sell a pipeline. You have to sell the refinery to which the pipeline is attached. The refinery to which the pipeline is attached is in Kansas.

To make the most viable possible divestiture, we ordered that all the downstream assets which the refinery supplies, which includes not just gas stations—people were asserting there are very few overlapping gas stations in places like Texas and Indiana. They are reading the consent agreement wrong. The consent agreement does not apply just to gas stations, it applies to all marketing facilities, which includes wholesale terminals, et cetera. In order to make the divestiture of the refinery in Kansas viable, which is absolutely necessary to cure the problem in Colorado, we required the divestiture of those downstream assets.

I think something you have to keep in mind, sir, is that because of the fact that Getty wanted to sell, there were going to be changes made. Those assets were going to be in the hands of a new owner. If people are under the impression that they could have stayed with the same situation—that is, Getty owning the refinery that supplied their product—that just wasn't true. If Texaco hadn't got it, Pennzoil would have.

Mr. SISISKY. I agree.

The other part that bothers me—we are talking about 200 truck stops. I am not going to pick the other segments, because I wasn't here for most of it. We are talking about 200 truck stops, built-in business. If this business was competitive, do you think somebody, some oil company, somewhere would stop in to see these people to see if they could sell them gasoline products, diesel fuel? What has happened to the oil business that makes it noncompetitive? There is something there that is happening.

In my former marketing business, my God, I would have jumped right down on them. There is an absolute guaranteed business. But nobody is interested in their business.

Then, I will come back to another question. Were the downstream people and the people who are involved, who appeared before this committee, invited to the hearings to testify to the FTC in this divestiture?

Mr. MURIS. Again, let me pick up that last point first—before the consent agreement was announced on March 7, by law, the Commission was not allowed to pick up the phone and basically invite people in to talk publicly to it.

We can talk to people, and we do talk to a lot of independents, about the potential competitive problems and about the——

Mr. SISISKY. Excuse me. You say by law. Would you cite the law for the staff? I have never heard of it. I know that you invite professional testimony to come into the FTC hearings. I can even give you the description.

Mr. MURIS. I am trying to——

Mr. SISISKY. You pay them, too, as a matter of fact.

Mr. MURIS. I am trying to distinguish two stages now.

When we have a legal proceeding, then it becomes public and people can participate. We invite people to participate. When we have an investigation, we cannot generally invite the public to participate. There is no right—in fact, it is prohibited by law—from people participating in our investigations, in the sense that we cannot——

Mr. SISISKY. Excuse me. Is that administrative law, or is that a law of the Congress?

Mr. MURIS. No. The law of the Congress with criminal penalties, to which we pay great attention, prohibits us from releasing confidential information.

Mr. BEDELL. But that is not our question, releasing confidential information.

Mr. MURIS. Confidential information includes even the fact that, in certain cases, a merger is being contemplated.

Mr. BEDELL. Would the gentleman yield?

Mr. SISISKY. I yield.

Mr. BEDELL. But the question is not what you are going to divulge; the question is whether you want to listen to people who have some information that might be of help to you in making your decision.

I don't think there is any question about your having to divulge anything. I think we would probably support such a law. But that has nothing to do with whether or not you are going to invite these people who have been before us to get to know what their concerns are.

Are you telling us that there is a law that says you can't have people in to try to hear their concerns?

Mr. MURIS. No. What I am suggesting is, if we think people are affected by and have testimony relative to—the competitive problem with which we are investigating, then we will talk to them.

For example, in the Texaco-Getty matter, we spent a lot of time talking to independent refiners on the west coast who were quite concerned about the impact of the proposed merger on them. But what I am talking about is the public procedure that we have now, by which people can come in and file comments and bring any concern to our attention that they want to. That procedure can't exist legally until the Commission takes the consent agreement step which it took on March 7.

Mr. SISISKY. Do you mean they can only after the fact?

Mr. MURIS. I think there is something that needs to be made clear. The Commission took a provisional step on March 7. The Commission will not take a final step until sometime after May 7, probably not until June. We will look closely at all the comments because we obviously are not confident, the way the Commission's procedure is set up, that we have all the answers.

We are talking to a great many people and soliciting a great number of comments on whether the divestitures that we have ordered are viable. Unfortunately, I have looked through a lot of comments and most of the comments say they are not viable, and they tell us what we should do instead, but they don't tell us why they are not viable. We thought, based on the considerable experience we have in this industry, that the divestitures we ordered are viable. We hope that people address the question of why they are not viable.

Mr. SISISKY. You made a preliminary decision. OK, now it is preliminary, right?

Mr. MURIS. Yes, sir.

Mr. SISISKY. Without any input from all of the people involved in it.

Mr. MURIS. No. We had considerable input from a great number of people. But it is certainly not true——

Mr. SISISKY. Excuse me. Did you have input from jobbers, service station operators, truck stop operators, those people?

Mr. MURIS. We have had——

Mr. SISISKY. I am not trying to be in an adversary position. I am trying to get to the meat of what came up here this morning.

Mr. MURIS. We certainly did not have input from all of the people who were involved this morning. We have had input from some of the people on these various mergers.

Mr. BEDELL. Would the gentleman yield?

Mr. MURIS. If you would like, I could provide a list of all the people we talked to.

Mr. SISISKY. Would you give me a short statement of the role of the Federal Trade Commission and what they are supposed to protect? I am really not trying to put you on the spot. I am trying to figure out what is the role of the Federal Trade Commission. I think I know, but I would like to hear it from you.

Are you an attorney?

Mr. MURIS. I am the head of what is called the Bureau of Competition, which is the antitrust part of the FTC.

Mr. SISISKY. OK.

Mr. MURIS. The Commission's role is to make sure that the marketplace is competitive. The primary person whom we exist to protect is the consumer. Our concern is that mergers are not going to put the marketplace in a position where we are likely to have less supply and greater price rises.

Mr. SISISKY. How in the world could you make a preliminary decision—and I am serious about this—without hearing all the parties that are involved? I cannot understand how you can make a preliminary decision without at least inviting them. If they don't come, that is another story.

Mr. MURIS. We talked to everyone—and we do in all cases—who we think can address the relative competitive concerns. The relative competitive concerns we had were in certain areas of the country. Colorado was the only area in the Midwest.

Now, in terms of the viability of the remedy, we also talked to a lot of people. But we had not stated it in terms of remedy—remember that most of these people, I think, are concerned about the remedy. They weren't so much concerned about whether what we said about Colorado was right or wrong.

The decision is clearly tentative in the sense that we want to be told if we are wrong. We want what those people want. We want these assets to stay in business. We don't want to make a mistake. We have had good success in the past, but that doesn't mean that mistakes won't occur. We are hoping that, in the comment period, people will come to us and tell us why it is that the remedies aren't viable. Unfortunately, a lot of what people are saying is that, no, we want better protection. But first they have to come to us and say why it is the remedies aren't viable.

Mr. SISISKY. This may be unfair to ask you about somebody else's testimony, that is what you think it meant. I say that up front.

This is testimony given by the chairman and chief executive officer of the Standard Oil Co. of California on April 5, 1984:

> If it becomes necessary to divest business operations, we believe it is desirable to do so in packages designed to be commercially viable, rather than in pieces that

may not have the strength to survive. To do this, we may divest some additional parts of Gulf beyond those required to comply with antitrust laws.

Would you have any comment on what that is all about?

Mr. MURIS. I think the last sentence—the first part of it and the last part of it don't work. If to comply with the antitrust laws you have to divest certain assets, then those are the assets that have to be divested.

In the Texaco-Getty situation, the only way that we were going to allow that merger to go through—taking Colorado again—is if we felt a viable remedy could be fashioned for the Colorado problem. The way that we felt the viable remedy could be fashioned was to require assets outside of the State of Colorado to be divested along with the pipeline.

So I think that that last part of the sentence implies that, somehow, you would require assets to be divested that really had nothing to do with antitrust law, and I think that is wrong.

Mr. SISISKY. I have one more question.

Are you satisfied that there is enough competition in the gasoline distribution business? Are you satisfied there is enough competition in marketing?

Mr. MURIS. The Commission has in its oil merger study not found significant problems at the retail level. When you go up a step to the wholesale level, we think there is more potential for problems at the wholesale level. In fact, in every merger that we have been involved with, we found the problem in the wholesale level.

Mr. SISISKY. Thank you, sir.

Mr. BEDELL. Thank you, Mr. Muris. We really appreciate the fact that you have come before us. We sure don't want to just get you before us to scream at you, but we do have some concerns, frankly, and, in my opinion, they are legitimate concerns.

What is your definition of fair and equal competition? You said that your purpose was to try to see that there is fair and equal competition. What is your definition of that?

Mr. MURIS. Again, our purpose is to make sure that the consumer gets the best deal possible in the marketplace. That is the primary, and probably many would say exclusive, goal of the antitrust laws.

At times, that can be inconsistent with the goals of independent competitors. But the antitrust laws exist to protect competition. That is, the overall marketplace and the effect on consumers, not individual competitors. So I would say that, in a nutshell, it is consumers that we focus on.

Mr. BEDELL. If you were to decide that, in your opinion, the consumers would get better prices if there were only half as many oil companies, then you would be fulfilling your mandate by cutting it down there where there are only half as many; is that right?

Mr. MURIS. It would not be our job to cut it down. But if we thought the result of a merger was going to be lower prices to consumers, then we would not stop the merger, and I do not think we legally could.

Mr. BEDELL. If it was going to mean there was just one oil company in the whole country and you thought——

Mr. MURIS. I find that inconceivable.

Mr. BEDELL. But if it were, and you were to decide that there could be just one oil company——

Mr. MURIS. The beauty of the competition standard that we apply is that it is consistent with a great diversity of power and diversity of numbers in the economy.

I think that we are not faced with the stark choice of whether a handful of firms are necessary to provide lower prices. When the Congress passed the merger law, the amendment to section 7, which is the law we enforced in the late 1940's, Congress said that it didn't believe—and I think it was right—that we need to concentrate in industry after industry the power in just a couple of firms. I think that it is true that we do not need to do that to lower prices.

Mr. BEDELL. You said there were two pipelines that serve the Denver area. Is that all there are, just two pipelines?

Mr. MURIS. No. There are four pipelines, but there are only two that are really capable of significant expansion. In other words, if there were some kind of competitive problem in the Denver area, in only two pipelines could you really ship more gasoline.

Mr. BEDELL. OK.

Mr. MURIS. And one was owned substantially by Getty and one was owned substantially by Texaco.

Mr. BEDELL. The one that was owned by Texaco, who did it serve?

Mr. MURIS. That ran from Wyoming into the Denver area.

Mr. BEDELL. From Wyoming down to Denver.

Mr. MURIS. Right.

Mr. BEDELL. Was it about the same size as the other one that Getty owned?

Mr. MURIS. I think they were close, but I don't remember—do you remember?

Mr. ROWE. They were roughly comparable in size.

Mr. BEDELL. In what other areas did the Wyoming one serve?

Mr. MURIS. Ron, do you remember?

Mr. ROWE. The Wyoming pipeline, the Wyco pipeline, of which Texaco had the major interest, served a variety of points from the origination area in Wyoming into the Denver marketing area. That would include major metropolitan centers, principally in Denver, where you would have large terminal distribution centers. It is part of an overall marketing distribution system to distribute product, fuel oil and gasoline, to the markets.

Mr. BEDELL. But it served the Denver market.

Mr. ROWE. That is right.

Mr. BEDELL. What other market did it serve?

Mr. ROWE. It served a variety of markets between its point of origin, and that would include off-take points where other pipelines and distribution systems in other markets would be located.

Mr. BEDELL. So it served from Wyoming to Denver?

Mr. ROWE. That is correct.

Mr. BEDELL. Why was it that you didn't ask them to divest themselves of that rather than to divest themselves of one that served the whole rest of the country pretty much?

Mr. MURIS. We could have asked.

Mr. BEDELL. Obviously. But why didn't you?

Mr. MURIS. We would have had the same problem.

Mr. BEDELL. You wouldn't have had the same problem in Iowa and Missouri and Indiana and New England and all across the rest of the country.

Mr. MURIS. No. Well, let me have Ron address that specifically, but the New England divestiture has nothing to do with the problem in Colorado. That is a whole separate problem.

Mr. BEDELL. We can talk about that when you get through with this one.

Mr. ROWE. The main reason is that the distribution system, the pipeline, the refinery, the crude gathering lines, the crude trunk lines, the crude terminals, the intake points, the field-gathering systems going into the refinery, and the product pipeline going out of the refinery with a myriad of off-take points, terminals, is a large distribution system, and comprises Getty's distribution system, and it is a very important component of the downstream marketing activities in these States that you are talking about.

If you were to piecemeal these, or if these had been sold off by the fiat of Texaco, or in various pieces by Getty, depending upon who bid the highest price, there is no guarantee whatsoever that there wouldn't have been some fairly difficult problems for people downstream in terms of getting product into those markets.

Mr. BEDELL. That is not answering my question at all.

My question specifically is that, in deciding that you are going to make them divest themselves of this refinery and the pipeline to Denver, you also said that since they are doing that, they have to divest themselves of all these stations that have been serving the Midwest. You had, it appears to me, the choice of doing that or the choice of telling them they had to divest themselves of the refinery that simply went from Wyoming to Denver, which would not have required all of that divestiture and all these problems for my jobbers and dealers. There must have been something in your mind that said there is some reason why it is better for us to do this, which created such a mess for a lot of my people in the Midwest, rather than to take the little one, the short one, which apparently ran just from Wyoming to Colorado. There must have been some reason that you decided among those two to do the one that creates havoc all through the Midwest. What was the reason?

Mr. ROWE. The simple answer is that the Getty package—the pipeline, the refinery, the distribution assets—are the most attractive and likely candidate for maintaining the level of competition, that is, supply and distribution, into the markets that are served. That, frankly, is the bottom line.

Mr. MURIS. Let me add a couple of——

Mr. BEDELL. That would have been great if they had kept that. You did it because you thought it would be better for Texaco——

Mr. MURIS. No; let me add a couple of points to that.

Mr. BEDELL. That is what he said, I thought.

Mr. MURIS. No, I do not think so, Congressman.

I think he is saying that it is better for competition. I think the length of miles from El Dorado to Denver isn't all that much different than the length of the pipeline that runs from——

Mr. BEDELL. That is not the issue. The issue is what is served by that refinery.

Mr. MURIS. I understand. But your implication was—I thought you were implying that there was a difference.

In fact, the required divestiture in Wyoming may have required us to put together a similar package. There was no indication that we had that Texaco was interested in maintaining the Getty assets in the same way that Getty had before. I think there would have been a substantial risk that Texaco would have tried to sell off some of those assets piecemeal.

Moreover, given the deal that we had, I think the probability of our stopping the Texaco-Getty merger on the basis of suggesting Wyoming divestiture, which could have caused a lot of the same problems, would have required again a package of divestiture. I think we would have had almost no chance to stop it in court. It is very hard to win a preliminary injunction. We just lost one yesterday, in fact.

Mr. BEDELL. OK. So what you are telling me, if I understand you correctly, is that you felt that, from a legal standpoint, you probably could not stop this merger between Texaco and Getty, even though you felt that there were problems in the Denver area if you let it go through?

Mr. MURIS. No; I think we could have stopped it.

Mr. BEDELL. If you could have stopped it——

Mr. MURIS. Let me finish. May I finish, please?

Mr. BEDELL. Sure.

Mr. MURIS. I do not think we could have stopped it just on the basis of insisting that they had to divest the Wyoming package as opposed to the Kansas package. The risk of a substantial spinoff or sale or some kind of reworking of the Kansas assets and the assets that you are talking about, even if we would allow Texaco to keep them would have been and would be significant. So I do not think it would have solved the problem, even if we could have legally done it, which I do not think we could have done.

Mr. BEDELL. I am not a lawyer. I recognize that. I sort of brag about it, to tell you the truth. But I can't understand if, indeed, you felt there was an antitrust problem if you let this merger go through, that you would not be properly protected in court and have a good case. I would think you would say we cannot let this merger go through because of the anticompetitive problems that would exist in the Denver area. I would think you would find it improper to let Texaco, if they buy Getty, dump the refinery in El Dorado and dump all those people on the market where there may be a buyer or may not. If Texaco does wish to divest itself of the smaller pipeline from Wyoming to Denver which will not cause all those problems, I don't see how you could approve it because of the problem in Denver, if what Texaco is going to do is to dump its refinery in El Dorado and, therefore, prevent adequate competition in that whole Midwest area.

I am not a lawyer, but I have to tell you that if I were a jury, you sure wouldn't get anywhere with me.

Mr. MURIS. I dispute the premise that a Wyoming divestiture, with the assets that would have been required to be viable, would have been any less of a problem. What you may have had was a whole different set of truck stop operators or whenever in here talking to us.

But let's talk about what would happen in court. Let's say that Texaco—if we were in court, we would have had to face the situation where if Texaco would have been willing to divest the Getty properties, which they were, I do not see how we would have had much chance at all of a preliminary injunction. If Texaco would simply want to say to the court we have offered this arrangement to the Commission and the Commission has refused it, we would have had to admit that that would have solved the competitive problem. If we allowed Texaco to keep the Getty assets—you seemed to imply, if I haven't gotten you wrong sir, that we could have somehow stopped Texaco from selling those Getty assets. We can not do that. We do not have that power. Only you have that power. Under the antitrust laws, we just do not have that power.

Mr. **Bedell**. You have, as I understood it, the power in the consent decree to agree as to what was to be done. Under that consent decree, unless I misunderstand, you certainly have some right to determine how this is to be accomplished. Do you not?

Mr. **Muris**. Let's talk about the——

Mr. **Bedell**. Before you sign the consent decree; do you not?

Mr. **Muris**. The premise that I now understand you are talking about is that we had signed a different consent decree, a consent decree that required a Wyoming package.

Mr. **Bedell**. Sure.

Mr. **Muris**. In that case, we could not have prevented Texaco from doing whatever it wanted with El Dorado and the service station in Iowa and all of the rest of the Midwest. There is no way we could have done anything about that, because we would have solved the competitive problem in a different manner.

Mr. **Bedell**. You could have done something very, very different, because as it is——

Mr. **Muris**. In fact, what we have done is for the next 30 months, we have guaranteed for up to 30 months a period during which those assets have to be maintained in the way that they are now. We have given them a lot more assurance than they would have gotten under your scenario.

Mr. **Bedell**. Do I misunderstand, or did your consent decree require them to divest themselves of a large number of stations in the Midwest?

Mr. **Muris**. Yes; but that was part of our solution to a competitive problem. Under your alternative scenario, we would have solved the problem not by requiring the Kansas divestiture package, but by requiring the Wyoming divestiture package, which would have left Texaco free to do whatever it wanted with your constituents' assets.

Mr. **Bedell**. OK.

Do you have the authority or do you not have the authority to prevent them from disposing of their filling stations if such disposition is going to diminish competition?

Mr. **Muris**. It would be very difficult for us to fashion an argument in the abstract. It would not be likely that disposing of any number of filling stations would cause a competitive problem. The only way that we could stop it is if they were selling them to another substantial competitor.

Texaco, if it wanted—I do not know why in the world it would want to do this—but if it wanted, it could close down hundreds of filling stations tomorrow and we could not stop them.

Mr. **Bedell**. Apparently, what you are telling me is if all the oil companies decided they no longer wanted to sell any gasoline in Iowa, there is nothing anybody could do about it. They could just pull out.

Mr. **Muris**. But the antitrust laws are based on the idea that if consumers in Iowa want gasoline—as the Congressman was saying—people have an incentive to sell to fill the market need. But, if for some reasons——

Mr. **Bedell**. Provided there is competition.

Mr. **Muris**. Yes; but if for some reason, they did it unilaterally and they did not do it together, but majors decided to pull out of Iowa, we would be extremely suspicious because it would not make much sense, and we would investigate it. But if they did it unilaterally, there is nothing we could do about it.

But, again, I do not see that scenario happening.

Mr. **Bedell**. OK. We are taking a long time.

I guess I share my colleague's concern in that you say that there be the same problems, but the reality is you don't know what the problems are no matter what it is because you do not, as I understand it, give these people an opportunity to come before you and tell you what they see those problems to be. That is correct; is it not?

Mr. **Muris**. No. I would dispute that in a couple of senses, sir. One, at this very moment—before the Commission has made a final decision—those people have the opportunity to come to see us.

Mr. **Bedell**. No, before the original.

Mr. **Muris**. Before the provisional consent agreement, we have talked to some people in the mergers that are going on now. Some of the very same people who are in here today have talked to us about the mergers that are going on now.

But what we can not do is go out and have something that amounts to this kind of public hearing procedure, public comment procedure that we are having now.

Mr. **Bedell**. Why can you not?

Mr. **Muris**. Because the Commission is barred by statute from discussing nonpublic aspects of a proposed merger transaction.

Mr. **Bedell**. Nobody is asking you to discuss anything; all they are asking is——

Mr. **Muris**. Well, how could we——

Mr. **Bedell**. Let me finish, if I might.

Mr. **Muris**. Yes, sir.

Mr. **Bedell**. All we are asking you to do is to listen to what these people have to say and what they consider their concerns to be. We are not asking you to divulge a darn thing; we are asking you to listen. It seems to me that we ought to operate in a society where, before the Government makes a decision that is going to put hundreds of individual operators out of business, that it is only proper in our society that these operators have a chance to be heard. If we operate in a society where the Federal Trade Commission doesn't care about such concerns, where their only concern is about their narrow idea of competition, then I think we have a serious problem in the whole system.

I hope you understand we are not asking you to divulge anything. We are only asking you if there is some reason that you don't want to know what problems these people are going to face if your order goes through the way you are proposing it.

Mr. **Muris**. It is very hard to ask people what their problems are if we can not tell them what we are thinking of doing and what the issues are. What were we going to ask them?

Mr. **Bedell**. You ask them to testify in regard to the problems that proposed mergers might cause.

Mr. **Sisisky**. That is basically it, what he had said. Your hearings, of course, are public, and probably their attorneys, if they have attorneys in Washington, should have known. Am I correct in that? Would they have been allowed?

Mr. **Muris**. Let me explain that the process is completely nonpublic at the investigation stage. If they want to—and many of their attorneys have done this—if they think there is a problem with Texaco-Getty while we are investigating it, or with Socal-Gulf, they can come in and talk to us. We will talk to them. In fact, we solicit a lot of those comments. In fact, some of the very same people in this room have talked to us about Socal-Gulf and they have talked to us about Texaco-Getty.

But what we cannot do is——

Mr. **Sisisky**. Open up a public hearing.

Mr. **Muris**. Yes, sir.

Mr. **Bedell**. I see nothing—I can't——

Mr. **Muris**. But we are willing to talk to anyone at any time. If somebody calls on the phone and says they have information on Texaco-Getty or Socal-Gulf we will not close the door. We will talk to them. We want to hear what people have to say.

Mr. **Bedell**. We had testimony earlier about the people who had submitted testimony or something, and they indicated that you would have to read every piece of testimony in a very short amount of time, and that there were so many comments offered, if I understood it correctly, that you didn't have time to digest all those comments. Maybe I misunderstood but that is my recollection of it.

Mr. **Muris**. There are a couple of different problems. During the public comment period, which is going on now, starting February 7 and ending May 7—we can take as long after that as we want to before making a decision—during that period, we have never had the experience where we had been so deluged with comments that we were not able to really focus on them all.

However, there is a problem which people were referring to right before I began to testify, and that is we do not have very much time to go over documents. We get literally hundreds of thousands of documents on an individual case. We have as short as 10 days from the time that we get the documents before we have to get a decision through the Commission, so we really do not have a lot of time.

But we try to talk to people who we think have knowledge. Anyone who thinks they have knowledge and calls us up, we will talk to them. But it is clear that we are, before we make the first decision, under considerable time pressure.

Mr. **Bedell**. I am sorry. I didn't realize Mr. Bilirakis was here. Mr. Bilirakis.

Mr. **Bilirakis**. Thank you, Mr. Chairman.

To continue on in this line of questioning, now you are going through the public comment period. How likely is it that there might be a change in the Federal Trade Commission's decision as a result of information which might be made available as the result of this public comment period?

Mr. **Muris**. The Commission made a slight change in the GM-Toyota consent agreement as a result of public comments. In the typical case, we do not get a lot of public comments, and we have had a long investigation beforehand. The Texaco-Getty matter will be different in both respects. Because of the time pressure, we did not have a long investigation and, because we received a lot of comments, there is a realistic probability that we may change.

But I would add that a lot of the people who have testified today have filed comments, and what the comments have been is a one-sentence assertion that what we have done is no good and here is what we should do instead. We thought that what we did was pretty good, and we need people to tell us why it was not. If all they told us was that they want to do something instead without telling us what the problems of what we have done are, that is not likely to influence us.

Mr. **Bedell**. Would the gentleman yield on that?

Mr. **Bilirakis**. Yes, sir.

Mr. **Bedell**. Would you have hearings so they could come before you and tell you why they think it is no good now that you already issued that?

Mr. **Muris**. The Commission's procedure is not to have public hearings. It has a public record, period. We are willing to meet with all these people to sit down and talk with them.

Mr. **Bedell**. Why is it that you refuse to have public hearings? You have already issued the order, so everybody knows what that is now.

Mr. **Muris**. The Commission's rules do not provide for public hearings. We are trying to treat the oil merger case like the others. It may be that public hearings are a better way to get the comments than people meeting individually with us and filing written statements; however, I do not see why sitting down and talking with us and giving us a written submission is not a good way to make comments to us.

Mr. **Bedell**. Thank you.

Mr. **Bilirakis**. For instance, as I understand it, approximately 1,900 service stations are to be divested as a result of the decree; is that correct?

Mr. **Muris**. There are about 1,900 service stations in the Northeast.

Mr. **Bilirakis**. All right.

Mr. **Bedell**. What about the Midwest?

Mr. **Muris**. I am not sure of the exact number of stations.

Mr. **Bedell**. I thank the gentleman for yielding.

Mr. **Bilirakis**. I could ask about the Southeast, too.

Mr. MURIS. There are no service stations in the Southeast.

Mr. BILIRAKIS. All right. Getty, I guess, was not down there.

Of those 1,900, how many were or are independently operated and how many are company operated?

Mr. ROWE. Are you talking about the Northeast?

Mr. BILIRAKIS. That are being divested under the order.

Mr. ROWE. Under the order, there are approximately 1,500 or so that are franchisee-type operations.

Mr. BILIRAKIS. In other words, independently operated?

Mr. ROWE. That is right. They are subject to franchise contracts, and a relatively small number of company stations.

Mr. BILIRAKIS. All right.

I suppose it would take an awful lot of time and a lot of depth to explore that to determine why the Commission, in its wisdom, decided that 1,500 should be independently operated and only 400 company operated.

But without getting to that right for the moment, you have heard testimony here today—I assume you have been here throughout the entire thing—you would have to be awfully cold, and I don't think you are, to not have been affected by that, not be moved by it. Now, after hearing these comments—these were public comments. Maybe you got one-sentence spiels from these people during your public comment period as far as your process is concerned, but you heard the appropriate type of public comments here today.

Is there any chance, as a result of hearing those comments, that that ratio might be changed? Is it engrained in concrete?

Mr. ROWE. If you are talking about the ratio of independent stations to company-owned stations, those are the stations that were in the Getty network. If you are talking about what has to be divested, the Commission cannot require divestiture of franchised assets. Those are individual businesses that are operated.

One of the questions that we have asked of Texaco—and you really should take an opportunity to read the Commission's announcement in the Federal Register of the divestiture and the request for comments—one of the reasons the Commission put this matter on the public record was to request comments of the type that you all have heard here today about the impact and the effect of the acquisition and the divestiture.

With regard to the divestiture in the Northeast, several questions were specifically asked about the impact of that. We have asked Texaco to explain—and they will be filing comments on the public record—about the impact of the divestiture with regard to both the independent stations and with regard to the company-operated stations. The Commission will look at that, assess it, and make its ultimate determination on the basis of what it learns.

So, if the thrust of your question is, "* * * the Commission concerned about the types of things that you have heard here today," the answer is emphatically, "yes." The whole procedure that has been devised and the Commission's rules and the order as crafted, the tentative nature of it, the care that goes into crafting those provisions, looking at what is produced on the public record, assessing that and making a recommendation to the Commission, and the Commission ultimately accepting, the answer is yes, that is a matter of very, very grave concern.

Mr. Bilirakis. Would the Commission conceivably consider the testimony or the transcript from today's hearing as part of their public comments in making the ultimate decision?

Mr. Rowe. Certainly.

Mr. Muris. Sure.

Mr. Bilirakis. Is this a matter of SOP that they would do this, or is it being done because we are requesting it.

Mr. Muris. No; we would look at any source of material that tells us whether the decision is one that makes sense or not.

Mr. Bilirakis. In the meantime—then, ultimately—I haven't seen the consent decree, obviously, but will the ultimate order specify specifically which stations will be divested?

Mr. Rowe. Yes; that is specified in a schedule.

Mr. Bilirakis. It specifies the entire 1,900?

Mr. Rowe. There is a schedule which describes the assets, including the retail marketing, that are to be divested.

Mr. Bilirakis. But not locations?

Mr. Rowe. Locations as well.

Mr. Muris. It says within certain geographic areas. It doesn't list it station by station. All the ones in a certain area.

Mr. Bilirakis. But if you are a service station owner of maybe a station that has been in the family for 30 or 40 years and put your blood and sweat and tears into it, money, and that sort of thing, how would you feel knowing that your station is in that particular area and is in just sort of limbo over this period of time until the final decree comes through?

Mr. Muris. Again, we are cognizant of the problem. These stations are going to be sold to someone, either to Texaco, to Pennzoil or someone whom we require them to be sold to. So the opportunity for the stations to remain the way they had remained in the past is just not in the cards. There was no conceivable antitrust violation in the Pennzoil-Getty lawsuit, and the law, as it stands now, allows Getty to sell. Given that Getty wanted to sell, there was going to be a change.

Mr. Bilirakis. Sir, I am a conservative Republican, and I disagree with the chairman now and then—quite often, I might add, particularly on the floor and not here in the committee hearings, but particularly on the floor where I can get away with it and am not within arm's reach of him. I don't think that mergers are bad, as such, and I certainly don't think that bigness is bad. But I think it is awfully bad for our Government, which is entrusted with the responsibility to be concerned about the small businessman—and I might tell you that all three of us who were here most of this afternoon are all members of the Small Business Committee. I am not sure whether Mr. Sisisky is part of the Energy and Commerce Committee. I don't think he is. Are you?

Mr. Sisisky. No.

Mr. Bilirakis. All right. So we are all members of the Small Business Committee, and that is our No. 1 concern. Our Government is entrusted with the responsibility to encourage the small businessman for all of the obvious reasons. I could read the act to you. I have it right here.

For an arm of our Government not to show the proper concern for the small businessman—let's be protective. Let's encourage the big guy, too, because without a Texaco, without a Getty, without a Mobil and whatnot, you are not going to have any little guys. That is for darn sure. Of course, we also should encourage business transactions to take place. After all, that is why business is in business, to make profits, and that way they can hire employees.

But to not be concerned about that little guy who had, as I said before, a service station in the family for so darn many years and, all of a sudden, as a result of a merger—or as a result of a decree, I should say, a decree by an arm of our Government, an agency of Government, that it is going to go out of business, for one reason or another—I don't care what the reason might be. I have seen the leases. I have copies of the leases here. Anytime the company wants, they have got to change their configuration, go into these convenience stores and things of this nature. I just don't think we are doing the job for the small businessman. I am greatly concerned about it. This is a conservative Republican who is concerned about business, big business as well as small business, but that hurts me very badly.

Mr. **Sisisky**. Would the gentleman yield?

Mr. **Bilirakis**. Yes.

Mr. **Sisisky**. I concur with the gentleman, but I think we are preaching to the wrong people. I think that perhaps this committee should advise the three Commissions, I think——

Mr. **Muris**. Five.

Mr. **Sisisky**. Five. I think we should make our feelings known to them. These gentlemen are just following what the procedures are administratively from the Federal Trade Commission, and I agree with the——

Mr. **Bilirakis**. Yes, sir. But there is a consent decree which doesn't take into consideration, I don't think, adequately the concern of the——

Mr. **Sisisky**. I said I agree with the gentleman. There is no question about that.

Mr. **Bilirakis**. I was going to read some provisions of the Small Business Act, sir, and the responsibility of Government for small business and whatnot. But I don't think it is necessary to read that. I think that probably we have covered it adequately.

Mr. **Muris**. May I respond?

Mr. **Bilirakis**. Yes.

Mr. **Muris**. I think that some of the things that you might want us to take into consideration and some of the things that people raised today are issues that are really precluded from being taken into consideration under the antitrust laws.

For example, a lot of people who testified here today testified to this committee before, and tried to get Congress to pass bills that basically give greater security to an individual gas station owner than that individual has now. The wisdom of those bills is really outside of what is currently involved with the antitrust laws.

We enforce a set of laws that have been around for a long while and have certain parameters to them. The kind of divestiture that we ordered in this decree is completely consistent with those laws. We are not completely insensitive to small business, because the bottom line is we want what these people want, we want these assets—the pipeline, the refinery, the terminals, the gas stations—we want them to stay in the business and we are willing to go to great lengths to try to see that that occurs. But we cannot, under the antitrust laws, guarantee anyone a particular job or particular contract with a particular company. We just cannot do that.

Mr. **Bilirakis**. But when you have a Commission which hazards to order the divestiture of 1,900 service stations in the Northeast area, they apparently feel that they have the authority and they have the power and that sort of thing to—there is a reason to do that. Consequently, I should think that whatever that reason is, it could be expanded to grandfather in, if you will, the owners of service stations up to a particular period of time or up to the time of the merger or whatever the case may be. That concerns me very greatly.

I talked to some people from Florida yesterday about this, Mr. Chairman. We are talking about their livelihood going down the drain. At age 45, 50, 55, 60, where do they go and find another job?

Thank you, sir.

Mr. **Bedell**. If you had decided that it should be sold to Pennzoil instead of Texaco, would you still have required that the 1,900 stations——

Mr. **Muris**. No.

Mr. **Bedell**. Mr. Bilirakis, I think you ought to hear this. This is a pretty important question.

Mr. **Muris**. It is not our decision——

Mr. **Bedell**. It is my understanding that another firm, Pennzoil, was requesting that it be considered for the purchase of Getty.

My question is, if they had said that they could sell to Pennzoil but not Texaco because of the problem in Denver, which they could well have said if they had seen fit to do so, would they still have had to require that 1,900 stations be divested?

Mr. **Muris**. Again, the reason the 1,900 stations in the Northeast are being divested is because there is a substantial overlap in direct competition between Getty and Texaco. There was no such overlap between Getty and Pennzoil in the Northeast. There is no chance that we could have stopped the Getty-Pennzoil merger. Yet, many of those service station owners would have faced differences undoubtedly, Pennzoil would have done things differently than Getty, and there is nothing we could have done about that.

Mr. **Bedell**. So the answer, if I understand it, is that if you had disapproved the sale of Getty to Texaco, then Getty would have been sold to Pennzoil, apparently, and then those 1,900 stations would have still been able—you would not have ruled that those 1,900 stations needed to be sold.

Mr. **Muris**. They would have been sold. They would have been sold to Pennzoil.

Mr. **Bedell**. I understand. But then, Pennzoil would not have to divest themselves of it as you have required Texaco to do; is that correct?

Mr. **Muris**. Yes, sir.

Mr. **Bedell**. Did you give that any consideration?

Mr. **Muris.** What we considered is whether there were anticompetitive problems that violated the antitrust laws in the Pennzoil-Getty proposed merger.

Mr. **Bedell.** Which there were.

Mr. **Muris.** No, there were none. Not in Pennzoil-Getty.

Mr. **Bedell.** OK.

Mr. **Muris.** In Texaco-Getty, there were problems, and we devised what is the standard antitrust solution—divestiture.

We are concerned with disruption. If we think that the comments reveal those assets are going to go out of business, then we will not recommend to the Commission that it accept that consent agreement.

Mr. **Bedell.** Is there some reason that you don't require information as to what the proposal is, as to how they are going to divest themselves of those assets, and to whom they are going to be sold before you agree to the consent decree?

Mr. **Muris.** Yes. The Commission's practice has always been to make a decision whether it thought the sale could be made, and if it did—which it does in virtually 99.9 percent of the cases—then it does not require a so-called fix-it-first policy.

Mr. **Bedell.** Why is that?

Mr. **Muris.** Because the Commission's experience has been that it is able to solve the competitive problem by a consent agreement with a future divestiture. And now that we have adopted—which we have in the last few years—using a trustee where, if Texaco does not sell the assets somebody else will and probably will not get as good a deal as Texaco might have been able to get, there is considerable incentive to make sure those assets are sold.

Again, we have a veto over whomever they try to sell.

Mr. **Bedell.** It seems to me that that is sort of backwards. If you have a veto, then you have control over to whom they are sold. I don't understand why you wouldn't want to know ahead of time what the arrangements were on the sale rather than decide to do it without knowing what the situation would be. There must be some reason why you don't feel that you should find that out ahead of time.

Mr. **Muris.** There are a couple of reasons. One, mergers can have beneficial impacts. Our experience has been that we can solve the competitive problems by the procedure that we follow—and, again, that has been our near universal experience. That procedure is a procedure that allows the beneficial impacts of mergers to occur as soon as possible.

Mr. **Bedell.** This is where I think that at least this member of the committee would have disagreement. One of the reasons we wanted this hearing is to get things on the record so that the public knew what the situation was and so that we understood it. In my opinion, that accomplishes one devil of a lot more for you and for the people who are concerned than if we said come in one by one and we will sit and talk to you in private, but nobody is going to know what your concerns were and what happened. We believe that this Government ought to operate out in the sunlight so that people know what the situation is and know what is happening.

I can't, for the life of me, understand the attitude of the Federal Trade Commission, particularly now that you have already made this decision, as to why you would not have public hearings so people could come before you and tell you what their concerns are, so the press would know what those concerns were, so the public would know, and so we Members of Congress would know, rather than saying if they will come in one by one and talk to us, we will let them talk to us, and then we will decide what we are going to do.

That is not really the way, I don't think, that we meant to have our system operate. If this Member has anything to say about it, we will have to legislate to tell you that you have to have some public hearings after that so that there is some opportunity to get this out in the light.

I have to tell you there is a lot of distrust in the oil companies. There is a lot of question as to whether the Government is in bed with them. I am not telling you anything new. You are certainly aware of that. We have had that brought up already among the people who testified before us.

I think we have a real responsibility to try to do what we can to show the public that those concerns are not correct—if they are not. If they are correct, we should see that they are corrected. To keep everything hidden in a closed room where one person can come in if they want to and talk to you about that, and that is it, and nobody is going to know what happened, to me, is not the answer to this sort of a problem. I have great trouble with the fact that the Federal Trade Commission apparently thinks that they don't have to be exposed to the public reaction to what is happening. I think that causes terrible troubles in our society.

Mr. MURIS. Could I respond?

Mr. BEDELL. Yes, sir.

Mr. MURIS. This is the fifth public hearing on the oil mergers situation. Each public hearing was focused, to one degree or another, on the particular divestitures we have ordered. So I think there has been no lack of public forum.

Second, we allow anyone to file a comment. Those comments are part of the public record. And we will sit down and talk with anyone.

Under Republicans and Democrats, liberals and conservatives, the Commission has always followed the procedure that I have described. Maybe that procedure is wrong. If it is, I would recommend the Commission deviate. But I am not convinced that the combination of five congressional public hearings, public comments, and numerous meetings with the individuals involved is not a way to get the issues aired in a sufficient manner.

Mr. BEDELL. I think it is up to this committee, this Member would feel, to write a letter to the Commission urging them to get things out in the daylight, especially because of some of the concerns that exist.

Mr. BILIRAKIS. I think, sir, there is a lot of merit to maybe weighing the pros and cons of something like that rather than we just quickly make a decision on it. I certainly would agree that we should at least look into it. I don't know that the decision should be made that we go that way, because I haven't heard, frankly, enough arguments one way or the other.

But I think it is important that we be sure that the transcript of this record be made a part of the consideration of the FTC in making their final decision.

Mr. **Bedell**. The other witnesses indicated that there is a real time problem, that you have to act so quickly on this thing, that you really don't have time to consider these things to the extent that at least they felt you should. Is that a problem to you?

Mr. **Muris**. We have people extremely skilled, and we are willing to pull—and we have pulled at one time or another—over 30 attorneys working on the Socal-Gulf matter. If the implication is that we really have not done a good job, I disagree with that.

But I do agree that some changes could be made to give us more time. I think that, if the law is changed, it should be changed in a way that the fact of giving us more time does not in itself decide who is going to win in a hostile tender offer. I would be glad to discuss that with you. It would be a rather complex amendment.

But I think that, under certain circumstances, I would support giving us more time. Obviously, if you have more time in major matters, then you can use it.

Mr. **Bedell**. I hate to keep you so long, but you had a list of things that you said your findings were on Texaco-Getty. I didn't want to interrupt you when you went through them, but I question several of them. You read what your findings were as to what——

Mr. **Muris**. We found four—I really was just talking about the various anticompetitive——

Mr. **Bedell**. Will you go over those again, please? I just couldn't believe some of the findings that you thought were true of the Texaco-Getty merger.

Mr. **Muris**. I understand what you are referring to now.

What I was saying was that there are certain similarities between the three cases that we looked at up to now, including Texaco-Getty.

The first point was that a major, vertically integrated petroleum company attempted to acquire a smaller, second-tier firm. That clearly fits Texaco. Texaco is one of the first-line firms. The second point is that, in each case, the Commission concluded there were antitrust problems. The third point is that none of the problems were caused by the mere overall size of the company—you know, bigness is not necessarily bad.

The fourth point is that each of the problems that we found affected only a relatively small, identifiable region of the country. In other words, they didn't affect the whole country.

Mr. **Bedell**. What is a small identifiable region of the country?

Mr. **Muris**. I said relatively small.

Mr. **Bedell**. What is relatively small?

Mr. **Muris**. Compared to the entire United States. The area that is affected in Texaco-Getty includes, I think, no more than probably half the continental United States, including everything, not just the Midwest problem. That is adding the four problems up together. Each of the regions together is a smaller subset of that. Even adding them all up together does not add up to the entire United States as a whole.

Fifth, each problem pertained only to one or, at most, a few of the products that a large oil company makes or sells. And sixth, the mergers created no antitrust problems that involved the discovery and production of crude oil.

Mr. BEDELL. OK.

Mr. MURIS. Those are the six.

Mr. BEDELL. OK. Coming from Iowa, I guess I would question whether half the United States is a small geographical area.

Mr. MURIS. I did not say that. What I said was that none of the four problems or the other problems that we have involved the majority or a major part of the United States. Add it up all together——

Mr. BEDELL. But that is not what you said.

Mr. MURIS. I said that——

Mr. BEDELL. Read it. Read what you said.

Mr. ROWE. If I may, Mr. Bedell——

Mr. MURIS. Each of the problems affect only a relatively small identifiable region of the country.

Mr. BEDELL. Yes.

Mr. ROWE. Obviously, Mr. Bedell, what Mr. Muris is saying is that we were able to identify specific product markets in geographic areas in which there were horizontal overlaps, antitrust problems, and other areas where there were not. I don't believe he was saying they were small relative to the world or the United States, but relative to the transaction overall.

Mr. MURIS. And the solution involved a lot bigger area of the country than the problem. The problem involved half of Kansas. The remedy for which your constituents are involved is a big part of the United States. If I gave you the wrong impression, I apologize for that. I was really referring to the competitive problems that we found.

Another problem involved about half of California. Another problem involved part of a pipeline, the Colonial Pipeline. The fourth problem, the biggest problem that we found in terms of geographical area, involved several States in the Northeast.

The whole area affected is quite large because of the remedies, but the problems themselves were relatively small regions. Again, I apologize if I gave you the wrong impression.

Mr. BILIRAKIS. Mr. Chairman, again we are talking maybe about a small part when we are talking about the Southeast, but I understand that that Chevron-Gulf merger is going to have a big impact on the Southeast. I am greatly concerned that, in some way, whether it be a part of that specific closed hearing or whatever the case may be, that there be input from small business people before a consent decree is issued in that particular situation.

Mr. MURIS. Again, Congressman, we are willing to talk to anyone. In fact, some of the people who were in here today talking to you have asked to talk to us about Socal-Gulf, and we are talking to them.

In the Southeast, I would say that that merger is different. I obviously cannot talk about the merits because we have not resolved it yet, but it is different in kind than the other mergers because it involves two major oil companies and not a major oil company and a so-called second-tier company. So any problems that we find, if we find problems, are likely to be bigger in geographic area than the problems we find——

Mr. BILIRAKIS. How does the FTC work from the standpoint of these ultimate decisions? Do you have personnel who make their recommendations, who are involved in these hearings and do the studying and talk to these people who are interested and whatnot, and then those personnel—engineers or whoever they might happen to be—would make their recommendations to the Commission?

Mr. MURIS. We have under Mr. Rowe, a career civil servant, a staff who specializes in this industry. We have lawyers, but we also have a staff of economists. In terms of engineering or other technical skills that we need, we will hire them on a consulting basis. We do not have any permanent employees.

They will make a recommendation to me, and then I will make an additional recommendation to the Commission—this is after considerable study. The Commission is composed of five members who are appointed for staggered, 7-year terms, no more than three of whom can be of any one political party. They are the ultimate decisionmakers.

In the Texaco-Getty case, which is something that I think is very significant, the issues that we are talking about now, the gas station and wholesale terminal divestitures, all five Commissioners, representing as wide a divergence of political philosophy as you can find in Washington, thought that those steps were appropriate.

Mr. BILIRAKIS. How long have those Commissioners been there approximately?

Mr. MURIS. One of them has been there 7 years, another has been there, 4 or 5, one has been there only a few months, another has been there about 3 years, and one has been there about 2 years.

Mr. BILIRAKIS. Do these Commissioners usually go along with the recommendations made by your office?

Mr. MURIS. Statistically, they go along in the vast majority of cases. But the bigger the case is, the more likely they are to look at it very closely, and they sometimes disagree. As a statistical matter, they agree with most recommendations.

Mr. BILIRAKIS. Thank you.

Mr. BEDELL. I presume you are aware of the fact that Texaco had already divested themselves of a great many of their facilities in the Midwest, so that by letting them take it over would be an indication that they were not particularly anxious to serve the Midwest area. I presume you are aware of that.

Mr. MURIS. Yes. If that is true, that is all the more reason why what we have done gives your constituents more protection than just leaving those assets in Texaco's hands.

Mr. BEDELL. No; they weren't in Texaco's, they were in Getty's hands.

Mr. MURIS. Again, under the law—the only way we could have stopped the situation in Colorado is to get divestiture of one pipeline or the other. If you are suggesting we get divestiture of the Wyoming pipeline. I am saying that my personal opinion as an antitrust lawyer—my entire 10-year professional career has been primarily involved in that; I was a law professor teaching it at one time—it is my considered professional opinion that we would have had almost no chance in court to get a preliminary injunction on the basis that we wanted Wyoming if Texaco was only willing to give up the pipeline connected to El Dorado.

Mr. **Bedell**. It could have been. But, as I understand it—my problem is not being a lawyer—but, as I understand it, you could have at least delayed, if not prevented, the merger between Texaco and Getty, and if that had occurred, Pennzoil was there to try to buy Getty and, if that had occurred, there would not have been the need to have to say that they had to get rid of all these different filling stations. Furthermore, there would certainly, from an outsider's viewpoint, appear to be a much greater chance that Pennzoil, who had not closed up a whole bunch of stations in the Midwest, might well let those stations continue to operate under their name as compared to if Texaco took them over. Is that incorrect?

Mr. **Muris**. Yes, sir, I believe it is incorrect. We made the decision at the last possible moment. Pennzoil had sued to try to stop the Texaco-Getty merger and had lost. We waited until the last possible moment where our only choice if we did not accept the consent agreement, was to go to court and seek a preliminary injunction.

I do not believe that, given the relief that Texaco offered, we could have obtained a preliminary injunction asking for more relief.

Mr. **Bedell**. Does staff have a question?

Mr. **Orban**. Yes, I have just one short question.

In your Federal Register statement, you asked the question whether some of the remedies you imposed were overbroad. You made a presumption in your presentation today that you could not cause Texaco to divest the Chase pipeline, without tying to it the refinery which is also tied to it the distribution network and the marketing network.

Is it not possible for some other form of divestiture of the pipeline to take place? Is it not possible to make it a common carrier?

Mr. **Muris**. Again, that is certainly not in our power. I think it is conceivable—one of the reasons we asked that question—it is conceivable, some people argue, that perhaps divestiture of just the refinery and the pipeline.

Mr. **Orban**. No. I'm referring to just the pipeline.

Mr. **Muris**. No.

I think Ron can give you the details on the common carrier. But none of us thought that—for reasons that Ron can elaborate on in just a minute—just the divestiture of the pipeline was good enough. Perhaps a divestiture of just the pipeline and the refinery is enough. That is what that question is directed toward.

But in that case, I think that the people downstream of that refinery would be worse off, because they would no longer be——

Mr. **Orban**. Downstream in marketing or downstream in the pipeline?

Mr. **Muris**. In marketing. They would no longer be tied in any way to the owners of the El Dorado refinery. I think they are better off if they have some relationship with the owners of the El Dorado refinery.

But let Ron address the——

Mr. **Orban**. I am just talking now about divesting the pipeline while retaining the El Dorado refinery.

Mr. **Muris**. OK.

Mr. **Rowe**. If you divested the pipeline and kept the El Dorado refinery, you have to remember that Getty's system runs into the front end of that pipeline. That pipeline has no conceivable purpose on Earth or in this universe for that refinery other than to distribute the product from that end.

We started with the refinery and the gathering of the crude oil and the refining into product to get to those markets. The pipeline was an investment by the companies to result in a distribution system that could get that product at the most reasonable cost, the lowest cost, into the markets where the demand was. The pipeline is simply the vessel through which the product, which is the life's blood of the marketing, goes. So a divestiture of the pipeline would be meaningless. It has no effect whatsoever, and no one would simply want to buy a piece of the pipeline without any investment whatsoever in the front end or the other end of the pipeline.

With reference to your question about making the pipeline——

Mr. **Orban**. They could still, theoretically, make a profit charging for the product that goes through it, right?

Mr. **Rowe**. They could. But people tend to invest in things like money market funds rather than getting, say, controlled rates out of pipelines. There is no investment in a pipeline. Pipelines are rate controlled.

Of course, under the *Williams* decision, which was overturned by the District of Columbia Court of Appeals just a few days ago, the higher rates of return allowed by FERC on common carrier pipelines are now in question. But assuming that higher rates of return under a common carrier pipeline, such as the Chase and the Wyco, were possible, it would have been inimical to competition to allow those pipelines to be controlled by one company who might have the incentive to equilibrate the rates above the competitive level for charging the people who need to use those pipelines to get into the market.

Mr. **Orban**. Are you going back to Texaco when you do that, or are you talking about something else?

Mr. **Rowe**. All I am doing is going back to the very first part of your question, which related to why can't you simply make a pipeline a common carrier. That is the answer.

Mr. **Orban**. OK.

Mr. **Bedell**. Are there any further questions?

We really appreciate you taking your time to be here. We know how busy you are. Obviously, we have some serious concerns. I don't think they are directed at your people. At least the chairman's concern is the way the system operates. It appears to me the system operates where you are charged with trying to see that things are competitive, and I understand that, but you are not charged with having any compassion or concern as to what your regulations and rules are going to do to those affected downstream from those rules and regulations. I think it is a deficiency in our system that concerns us greatly. I am not sure how we can correct it. If we could do something legislatively, I would think we should try to do it.

So, thank you very, very much.

[Whereupon, at 5:15 p.m., the subcommittees adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

SSDA
SERVICE STATION DEALERS OF AMERICA

400 NORTH CAPITOL STREET · N · W
SUITE 175
WASHINGTON · D · C 20001
202/393-6868

VIC RASHEED
Executive Director

March 29, 1984

The Honorable Berkley Bedell
US House of Representatives
House Office Building
Washington, D.C. 20515

Dear Berk:

Enclosed is a copy of the comments filed by the Service Station Dealers of America in response to the proposed consent order associated with the pending acquisition of Getty Oil Co. by Texaco, Inc. While the Texaco-Getty merger is the immediate subject of the letter, it includes comments of revelance to the pending Socal-Gulf and Mobil-Superior mergers and perhaps others that have yet to occur.

SSDA, as the representative of 60,000 gasoline station operators, is distressed that the Texaco-Getty consent order ignores the important role small businesses can play in enhancing competition and serving consumers. The consent order not only ignores the thousands of small businesses who are affiliated with Getty, it actually harms their interests.

If the Texaco-Getty merger is allowed to proceed -- and we are opposed to it proceeding -- we believe the consent order should be restructured in such a way that it will enhance competition among independent marketers. As it stands now, it may actually lessen competition.

For example, in recent market areas where it was felt Texaco-Getty would have too much control, divestiture is ordered. But why is it that the dealer-run Getty stations are the ones being divested and not the company-run stores which are directly controlled by Texaco-Getty personnel? Why are the small stations divested while Texaco gets to pick 30 of the very largest Getty stations to keep? Why does the order require divestiture of Getty stations in markets from which Texaco has already withdrawn, such as the Upper Midwest?

We urge you to read the enclosed comments carefully. Not only do we seek to revise the consent order in the Texaco-Getty case, but we hope these concerns will be taken into account in the design of any future agreements regarding other oil company mergers.

Thank you for your consideration.

Sincerely,

Marc Rosenberg,
Legislative Consultant

MR:er

Enclosure